

# ATTACHMENT A

1 Q Okay. Did they have any children by  
2 that marriage?

3 A They had twin boys.

4 Q What are their names?

5 A Christopher and Casey.

6 Q Okay. How old are they?

7 A They just turned three, and that was in  
8 December, I guess. They're three and a half.

9 Q What name did everyone in your family  
10 call Mr. Smith by?

11 A Frank.

12 Q Okay. Did you ever know him by any  
13 other first name than Frank?

14 A No.

15 Q Is that what Judy Smith and Chad  
16 and Jason Burnett called him?

17 A Yes, sir.

18 Q Did you personally ever hear Mr. Smith  
19 make any threats against your daughter or Chad and  
20 Jason Burnett?

21 A On -- just a couple of weeks before, it  
22 was two or three weeks, I can't recall the exact time  
23 frame there, about two or three weeks before that, he  
24 came to the house. He was supposed to pick up the  
25 twins and Judy was not there. And he said, "You tell

1 Judy that I've been playing with her with kid gloves,  
2 but now the gloves are coming off.

3 One other occasion at their house, he  
4 had said if she ever left him that she -- that he would  
5 kill her.

6 Q Prior to her death, during the period  
7 that she was separated from Mr. Smith, did she ever  
8 express fear for herself and her children from anybody?

9 A Yes, she did.

10 Q Who was that, please, sir?

11 A From Frank.

12 Q After your daughter moved to Lutie  
13 Street, who provided all the furnishings for the house  
14 there?

15 A When she left, she didn't have anything,  
16 so my wife and I and her brothers -- her brother and  
17 sister-in-law and several members of the family and  
18 friends provided whatever she had. She did buy a  
19 couple of small things, a couple of beds and it seemed  
20 like another item or two, but most of it was all  
21 provided by family and friends.

22 Q Was Mr. Smith allowed visitation with  
23 the twins after the separation, pending the divorce?

24 A Yes, it was on weekends.

25 Q And --

A And I'm not --

1 A Yes, sir.

2 Q Was that the tape you listened to?

3 A Yes, sir.

4 Q How can you tell that's the tape you  
5 listened to?

6 A I put my initials on it.

7 Q Were you able to identify any of the  
8 voices on that particular tape?

9 A Yes, I was.

10 Q Okay. Were you able to identify whose  
11 voice was making the call?

12 A It was the younger son, younger  
13 grandson, Jason, was making the call.

14 Q Okay. Were you able to determine whose  
15 voice was in the background?

16 A Yes, that was the older one, Chad.

17 GEN. THURMAN: If the Court, please, I'm  
18 going to ask for identification purposes only it be  
19 made an exhibit to his testimony.

20 THE COURT: Okay.

21 GEN. THURMAN: That it be Exhibit No. 1.

22 THE COURT: It will be No. 1 for  
23 identification to Mr. Robirds' testimony.

24

25

1 A Yes, I did.

2 Q How long had they lived at that  
3 particular address?

4 A They moved there around mid-July.

5 Q Did you know the defendant, Oscar  
6 Franklin Smith?

7 A Yes, I did.

8 Q How long had you known Mr. Smith?

9 A Since just prior to their marriage.  
10 I think 1985.

11 Q Okay. So they were married in 1985; is  
12 that correct?

13 A (No response.)

14 Q What name did Judy and her sons call Mr.  
15 Smith?

16 A Frank.

17 Q Everybody in the family called him that?

18 A Yes.

19 Q What was the status of the marriage  
20 between the Smiths at the time of your sister's death?

21 A They were separated, going through  
22 divorce proceedings.

23 Q Do you know the date of the separation?

24 A In June. I'm not sure of the exact day.

25

1 Q On the day that they did, in fact,  
2 separate did you receive a call from any person?

3 A Yes, my nephew Chad called to my  
4 mother's house and needed someone to come out there  
5 right away to pick them up.

6 Q Did you respond to that particular call?

7 A I did.

8 Q Okay. How long did it take you to get  
9 to where they requested you to come?

10 A About 30 minutes.

11 Q And did you, in fact, find Judy Smith  
12 and her sons, Chad and Jason Burnett?

13 A Yes, I did.

14 Q And how far were they from the trailer  
15 where they had been living?

16 A They were one -- about one mile from the  
17 trailer, walking down the road.

18 Q Okay. How were they acting when you  
19 stopped to talk to them?

20 A They were all very nervous to the point  
21 of hysterical, all of them talking at once.. It was  
22 hard to get them to calm down enough to tell what had  
23 happened and what was going on.

24 Q Were you able to get them calmed down  
25 enough where they could tell you what had happened?

A Yes, they did.

1 Q Okay. And what did they tell you  
2 happened?

3 A My sister was saying that they had been  
4 in an argument, and it had escalated. Frank and Jason  
5 had gotten into a fight. He had been trying -- he had  
6 -- Frank was kicking Jason's legs and was trying to  
7 kick him in the groin, then ended up biting him on the  
8 back. It escalated from there. He told them to get  
9 out, had got a gun out, had put it to Jason's head.  
10 They had gone outside. He shot the gun out in the air.  
11 He told them to just get out. And they all left. She  
12 was trying to get -- she did get her purse, but that  
13 was all their belongings that they -- she was able to  
14 get. He told her not to get the car or try to get the  
15 kids or he would kill 'em. And if she took out a  
16 warrant or brought the police up there, that he would  
17 kill them.

18 Q Where did you take them when you got  
19 them back to Nashville?

20 A When we got back to Nashville?

21 Q Yes, ma'am.

22 A We didn't actually come back to  
23 Nashville. First, we went to a phone up in the  
24 Springfield area.

25

1 Q I understand that, but after you left  
2 the Springfield area where did you take them later that  
3 day?

4 A We first went to the phone, trying to  
5 call the Crisis Center to find a shelter for battered  
6 women that she could go to. We were unsuccessful. All  
7 the shelters were full, so I did take her over to my  
8 sister-in-law's house and my brother's house.

9 Q And how long did they stay there?

10 A They stayed there only one night. Then  
11 they came over to my parents' house and stayed. They  
12 stayed approximately three weeks.

13 Q Okay. Did they have anything other than  
14 the clothes on their back at that time?

15 A No, they did not.

16 Q Where did they move when they left your  
17 parents'?

18 A To Lutie Street.

19 Q Okay. And during this period of time of  
20 separation, did your sister ever express fear from any  
21 one person for her life and her childrens' lives?

22 A Only from Frank.

23 Q Did you personally ever hear any threats  
24 made by Mr. Smith to your sister or her sons?

25 A No, not direct threats.



1 Q Did you ever know Oscar Frank Smith to  
2 carry any type of weapons?

3 A Yes, he always had a knife on his belt,  
4 a case knife.

5 Q You're saying a case knife. What kind  
6 of a knife are you talking about?

7 A Folding knife with a blade about that  
8 long (indicating with hands), about two to three inches  
9 long, the wide blade.

10 Q And then in August of 1989, did your  
11 sister have an occasion to go back to recover some  
12 clothes and other items?

13 A Yes, she did.

14 Q Did you see her after she had done that?

15 A Yes, I did.

16 Q Where was that, please?

17 A At my mother's house.

18 Q Did you observe her condition at that  
19 time?

20 A Yes, she was very confused, in shock,  
21 very -- almost down -- downgraded or feeling really  
22 bad, mostly in shock. She really didn't -- wasn't  
23 hysterical, but she was so flat it was just hard to --  
24 hard to explain how she was.

25

1 Q Okay. Were you able to identify the  
2 voice of the person who was actually on the phone  
3 asking for assistance?

4 A Yes, I was. It was Jason Burnett, my  
5 oldest nephew, I mean my youngest nephew.

6 Q Were you able to identify the voice in  
7 the background?

8 A Yes, I was. It was --

9 Q And who was that, please?

10 A It was Chad Burnett.

11 Q Okay. Were you familiar with your  
12 sister's handwriting?

13 A Yes.

14  
15 (Pause in the proceedings while  
16 Gen. Thurman shows documents  
17 to defense counsel.)

18  
19 Q (By Gen. Thurman) Okay. Let me hand  
20 you these sheets of paper.

21  
22 (Document handed to the witness.)

23  
24 Q (By Gen. Thurman) Can you identify the  
25 writing on that piece of paper?

1 A This is just a photograph of the front  
2 door as we saw it when we walked on the steps. I  
3 assume that would be called the porch, the front porch.

4 Q And that is where located on the  
5 diagram?

6 A That is this location here (indicating  
7 on diagram).

8 Q And you entered through the front door?

9 A We entered through the front door. We  
10 checked. There was no forcible entry at the front  
11 door.

12 Q When you say "no forcible entry," what  
13 does that term mean? -

14 A That means that it didn't appear that  
15 anyone had broken in the house, the door was open, and  
16 the lock was unlocked.

17 This next photograph is what we saw when  
18 we walked in the front door, looking back down the  
19 hallway in a north direction. You can see the debris,  
20 some of the debris, a belt, which is indicated in the  
21 diagram. And you can see the bathroom at the very back  
22 of the house. You can also see some bags of clothing,  
23 which was not indicated on the diagram, because we  
24 didn't feel like that was significant just to put on a  
25 diagram.

1 arm had been at one time. The blood had transferred  
2 from her arm to her blouse.

3 There was also something on the bed that  
4 we noticed immediately. And it was an impression made  
5 by a palm print, made by a person's hand. And it was  
6 at this location right here (indicating on photograph).

7 Q You have noted that location over here  
8 (indicating on diagram)?

9 A That's correct.

10 Q All right.

11 A We apparently --

12 Q What were you --

13 A We assumed that palm print was made in  
14 blood at that time.

15 Q Okay. Now, what --

16 A Okay.

17 Q If you would, just point out what other  
18 observations did you have in that room?

19 A After examining that particular body,  
20 without touching her or moving anything around, we  
21 decided -- I looked to the left and saw the victim's  
22 youngest son laying on the floor at the end of that  
23 bed. He was lying in approximately the same position  
24 that you see him in the diagram.

25 Something unusual or something brought

1 (Gen. Blackburn holds up  
2 photograph for the jury  
3 to see.)

4  
5 (Gen. Blackburn hands  
6 the witness another  
7 photograph.)

8  
9 THE WITNESS: This is also sitting  
10 somewhere right behind Jason and like right close to  
11 the heater. And it's a disposable diaper box. And the  
12 reason that this was photographed, one reason was that  
13 it did have blood splatter on it, indicating it was a  
14 forcible splatter, which we would explain later. And  
15 also, if you look down into the box, you'll see a  
16 yellow -- I mean a brown cotton glove that was found.  
17 It was a lefthand glove.

18 Q (By Gen. Blackburn) Where on -- where  
19 in this photograph was the blood?

20 A The blood splatter itself was on the  
21 box.

22 Q Where's the glove?

23 A The glove is inside the box.

24 Q Right -- is that --  
25

1 A The dark area is the blood itself. It's  
2 very difficult to see from that angle.

3 Q And that was found --

4 A That was found right behind Jason,  
5 between Jason and the heater that you saw the blood on.

6 (Gen. Blackburn holds up  
7 photograph for the jury  
8 to see.)

9  
10 (Gen. Blackburn hands  
11 the witness another  
12 photograph.)

13  
14 THE WITNESS: Okay. This is the bedroom  
15 -- this is going to be the den across the hall. I've  
16 indicated it as a den. After leaving this particular  
17 room, I went out into the hall, along with Sergeant  
18 Robert Moore, went in this room.

19 And this is photographs of that room.  
20 This is photographed back in the direction that I came.  
21 in. This photograph was to depict, first of all, the  
22 location. And secondly, it was to depict the location  
23 of a live round, a live cartridge, a .22 caliber  
24 cartridge that was found. The cartridge is, of course,  
25

1 THE WITNESS: This is another angle  
2 showing the table leg, also showing the awl that's  
3 lying on a paper sack, which I didn't show in that  
4 photograph. An awl is similar to an ice pick,  
5 sometimes used in leather work, I believe, a tennis  
6 racquet laying here, pizza boxes (holding up  
7 photograph). There is also something we noticed that  
8 may be -- might be of some significance, was a --  
9 someone had prepared some food. It was on the counter.  
10 There was only one bite that had been out of it. That  
11 food was a piece of pizza and also a bologna sandwich.

12  
13 (Gen. Blackburn holds up  
14 photograph for the jury  
15 to see.)

16  
17 (Gen. Blackburn hands  
18 the witness another  
19 photograph.)

20  
21 THE WITNESS: This is just another  
22 angle, showing just a table as it was turned over,  
23 showing the blood splatter on it. Large spots of blood  
24 splatter like that is usually very low velocity coming  
25 from a wound that's bleeding quite a bit.

1962

1 There was also a pen beside it. There was a pair of  
2 blue jeans lying on the floor beside the bed. And if I  
3 remember correctly, there was I.D. belonging to Chad  
4 inside the pockets.

5 (Gen. Blackburn holds up  
6 photograph for the jury  
7 to see.)

8  
9 (Gen. Blackburn hands  
10 the witness another  
11 photograph.)

12  
13 THE WITNESS: Okay. This is another  
14 photograph in Chad's room. This is the back door of  
15 the house. There's only two doors to the house, the  
16 front door that we come in, and this is the back door.  
17 Again, we examined the back door for forced entry, and  
18 we didn't find any. In other words, the door hadn't  
19 been pried that we could tell or kicked in.

20 Q (By Gen. Blackburn) Okay. And that is  
21 at this location right here (indicating on diagram)?

22 A That's correct.

23 Q So the only doors to the house would be  
24 one through Chad's room and the other through the front  
25 door?

1970



1 consistent with arterial bleeding here, which is a  
2 large quantity of blood. The small blood splatters  
3 here on this was cast-off splatters. And there was  
4 also a small splatter of blood here.

5 A bullet hole -- the last bullet hole  
6 was found right here. Only a partial, a very small  
7 fragment of that bullet was found. It was torn apart  
8 when it was retrieved from the wall.

9 (Gen. Blackburn holds up  
10 photograph for the jury  
11 to see.)

12  
13 (Gen. Blackburn hands  
14 the witness another  
15 photograph.)

16  
17 THE WITNESS: There was an awl that was  
18 found in the kitchen. This is a photograph of my  
19 hands. I was trying to process it for fingerprints.  
20 There was no fingerprints found on that particular item  
21 that was identifiable.

22  
23 (Gen. Blackburn holds up  
24 photograph for the jury  
25

1 individual processing the items in the bedroom, such as  
2 the walls near the victims, anything that was smooth  
3 and non-porous that we could process for prints that  
4 particular night.

5 Q Sergeant Hunter, what -- were you able  
6 to do anything at all with the footprint that was there  
7 in the kitchen, that was the bloody footprint?

8 A No, that footprint was photographed and  
9 took back to our lab to be able to try to match it, but  
10 there wasn't enough detail to find out whose footprint  
11 that belonged to.

12 (Pause in the proceedings while  
13 Gen. Blackburn shows photograph  
14 to defense counsel.)  
15

16 Q (By Gen. Blackburn) Sergeant Hunter, I  
17 would have --

18 THE COURT: Gen. Blackburn, are you to a  
19 kind of a next stage in the questioning?  
20

21 GEN. BLACKBURN: Yes.

22 THE COURT: Okay. I think I might want  
23 to give the jury about a little ten-minute break here  
24 to let them kind of loosen up and so forth. So let's  
25 -- we're going to -- this is going to go on a little

1 Q The one that has two fingers missing,  
2 which hand is that?

3 A That's the left hand.

4 This is a photograph taken of abrasions  
5 on the defendant's back (holding up photograph) and the  
6 defendant's elbow.

7 Q And you were taking these at the request  
8 of the detectives that were there?

9 A That's correct.

10 Q Thank you, Sergeant Hunter.

11  
12 (WHEREUPON, the witness returns  
13 to the witness stand.)  
14

15 GEN. BLACKBURN: Your Honor, I would  
16 just request that these photos be Exhibit No. 11, a  
17 collective exhibit.  
18

19 (State's Exhibit No. 11,  
20 eleven (11) photographs, marked  
21 and filed.)  
22

23 Q (By Gen. Blackburn) Sergeant Hunter,  
24 while you were in Robertson County, were various other  
25 identification officers going to other places?

1 MR. DEAN: Your Honor, I'd request any  
2 Jencks material.

3 THE COURT: Go ahead. All right.  
4 General Blackburn.

5 (Pause in the proceedings while  
6 Gen. Blackburn hands Jencks  
7 material to Mr. Dean.)  
8

9 MR. DEAN: It's fairly lengthy.

10 THE COURT: All right. Take your time.

11 GEN. BLACKBURN: While he's reviewing  
12 that, could I ask Sergeant Hunter a couple more  
13 questions on something I forgot?  
14

15 THE COURT: Yes, go ahead and finish.

16 Q (By Gen. Blackburn) Sergeant Hunter,  
17 when you were comparing the latents found at the crime  
18 scene, were you able to identify the latents you found  
19 at the crime scene?

20 A Yes, I was.

21 Q And what, specifically, were the results  
22 of that comparison?

23 A The results of that comparison was one  
24 latent fingerprint, No. 1 finger, which is the right  
25 thumb was identified to Judith Smith, recovered from

Q (By Gen. Thurman) Okay. And what  
1 vehicle did you see in front of the house when you  
2 passed it, please, sir?

3 A It looked like a white LTD. It looked  
4 like an old police car, is what it looks like.

5 Q Okay.

6 A And a station wagon.

7 Q How was it parked?

8 A It was parked straight in. I mean you  
9 could see the back end of the car.

10 Q Let me hand you a photograph that's been  
11 marked State's Exhibit No. 11-A, and ask you if that  
12 appears to be consistent with the car you saw that  
13 night?

14 A Yes, this is the car.

15 Q And that's the car you saw parked that  
16 particular night?

17 A Yes, sir.

18 Q Sometime between 11:00 and 11:15?

19 A Right.

20 GEN. THURMAN: If the Court, please,  
21 that's all the questions I have, but I am going to ask  
22 that that photograph be made an exhibit, the one that  
23 he marked on.

24 THE COURT: Okay. Mark that. The car  
25 was already an exhibit, was that correct?

Q And was that warrant still pending on  
1 October the 1st of 1989?  
2 A It was.  
3 Q When was the court date scheduled on  
4 that warrant?  
5 A October 30th, 1989.  
6 Q Okay. And do you have a warrant dated  
7 in August?  
8 A Yes, I do. It was issued on August 1st,  
9 1989.  
10 Q What is the warrant number on that?  
11 A 185-1027.  
12 Q Okay. And what is the charge on that  
13 case?  
14 A Aggravated assault.  
15 Q Okay. And when was the court date on  
16 that particular case?  
17 A It had been continued to October the  
18 30th, 1989.  
19 Q Okay. And who was the alleged victim in  
20 that case?  
21 A Judy Smith.  
22 Q Can I see those warrants, please?  
23  
24 (Warrants handed to Gen. Thurman.)  
25

1 GEN. BLACKBURN: Mr. O'Mara.

2 THE COURT: Mr. O'Mara, Les.

3 MR. ROD O'MARA was called, and being  
4 duly sworn, was examined and testified, as follows,  
5 to-wit:  
6

7 DIRECT EXAMINATION

8 BY GEN. BLACKBURN:  
9

10 Q Please state your name.

11 A Rod O'Mara.

12 Q If you would, spell your last name for  
13 the court reporter.

14 A O-'-M-a-r-a.

15 Q Where are you employed, sir?

16 A American General Life and Accident  
17 Insurance Company.

18 Q And what is your position there?

19 A I'm the Associate Director of Claims and  
20 Manager of the Life Claims area.

21 Q And at my request, did you bring with  
22 you the policy that Oscar Franklin Smith had obtained  
23 that includes coverage on Judy Smith, Chad Burnett, and  
24 Jason Burnett.

25 A Yes, I did.

1 Q If you would, please, look at that  
2 policy, and first of all, would you tell us what type  
3 of a policy it is?

4 A This is a -- it's a joint whole life  
5 policy. It insured both Oscar F. Smith and Judy Smith  
6 and the children, under a children's term coverage  
7 writer. Each -- each of the adults were covered for  
8 \$20,000 and each child for -- for \$10,000.

9 Q Okay. And how many children are  
10 included in that policy?

11 A There's six children named on the  
12 application.

13 Q All right. Now, with regard to Judy  
14 Smith, the amount of coverage on her life would be  
15 \$20,000?

16 A Right.

17 Q Okay. And as to Chad Burnett, \$10,000?

18 A Right.

19 Q And as to Jason Burnett, \$10,000?

20 A Right.

21 Q And when was this policy taken out?

22 A The application for the policy was March  
23 the 6th, I believe, yeah, March the 6th of 1989.

24 Q And what type of renewal did that policy  
25 have?



1 MR. KEN HAMBRICK was called, and being  
2 duly sworn, was examined and testified, as follows,  
3 to-wit:

4 DIRECT EXAMINATION

5 BY GEN. BLACKBURN:

6  
7 Q Please state your name.

8 A Ken Hambrick.

9 Q If you would, spell your last name for  
10 the court reporter.

11 A H-a-m-b-r-i-c-k.

12 Q And what do you do for a living, sir?

13 A I'm District Manager for Liberty  
14 National Insurance.

15 Q All right. And did you bring with you  
16 at my request records on the policies obtained on the  
17 life of Judy Smith, Chad Burnett and Jason Burnett,  
18 obtained by Oscar Franklin Smith?

19 A Yes, I did.

20 Q If you would, what type of a policy was  
21 that?

22 A This was a family type policy, where it  
23 insured the applicant, Oscar Smith, his wife, Judy  
24 Smith, and the children.

25

1 Q Okay. How many children were included  
2 in that policy?

3 A I don't have that -- excuse me -- I do,  
4 too. They -- all the children, stepchildren and  
5 children of the marriage.

6 Q And what was the value of the life of  
7 Judy Smith?

8 A \$20,000.

9 Q And as to Chad Burnett?

10 A \$5,000.

11 Q And as to Jason Burnett?

12 A \$5,000.

13 Q Okay. So a total of \$30,000?

14 A That's correct.

15 Q When was this policy obtained?

16 A This policy was applied for on  
17 February the 2nd of '89.

18 Q And who was the beneficiary of -- on the  
19 lives of Judy Smith, Chad Burnett and Jason Burnett?

20 A Oscar Smith.

21 Q And when was -- what type of renewal did  
22 that policy have?

23 A It was a monthly premium policy, where  
24 he paid the premium each month.  
25

THE COURT: Mr. Watts.

MR. JERRY WATTS was called, and being  
duly sworn, was examined and testified, as follows,  
to-wit:

DIRECT EXAMINATION

BY GEN. THURMAN:

Q State your name for the Court, please.

A Jerry Watts.

Q And how are you employed, Mr. Watts?

A I work for an electrical distributor  
here in town.

Q And were you at one time employed at  
Maintenance Service Corporation?

A Yes, sir.

Q And did you know the defendant, Oscar  
Franklin Smith?

A Yes, sir.

Q How long have you known Mr. Smith?

A At that time, approximately 12 months.

Q And did you and Mr. Smith become  
somewhat friends while you were working at Service  
Maintenance Corporation?

1 A Yes, sir. He was a work associate with  
2 me. We would talk during lunch hour, basically, daily  
3 or every other day during the week..

4 Q And did you have an occasion to see Mr.  
5 Smith use a knife at work?

6 A Yes, sir. Mr. Smith would come into my  
7 office occasionally and have lunch. And he would make  
8 sandwiches and put his mayonnaise on his sandwiches  
9 with a -- with a knife. And also, one instance, he  
10 came in, and Mr. Smith has two fingers missing on his  
11 left hand. And he asked me to cut two fingers off  
12 with a knife, off of his gloves, so he wouldn't get it  
13 stuck in some machinery.

14 Q And could you just describe that knife?

15 A It appeared to be a long buck knife,  
16 brass tips, wooden style handle, maybe three and a  
17 half, four inches long.

18 Q And did you also have an occasion to see  
19 some guns that belonged to Mr. Smith?

20 A Yes, sir. Mr. Smith, we were talking  
21 one day. And I had spoke about buying the pistol. And  
22 he said he had one for sale, that it was a little -- in  
23 bad shape, but he still was thinking about selling it,  
24 and that he was going to a local gun range to fire, and  
25 for me to meet him there, and we would fire at some  
targets. And I did meet Mr. Smith there. And he was

1 already there when I arrived. I went downstairs, and  
2 he was already shooting. And I used his weapons to  
3 fire at the targets.

4 Q And what -- what weapons were there that  
5 you can testify about?

6 A He had four -- four weapons. He brought  
7 four with him. One was a .22 caliber rifle with a  
8 scope, lever action. One was a 9 millimeter handgun, a  
9 Smith and Wesson, I believe. One was a 9 millimeter  
10 Intertact 9, which is an assault pistol, and one was  
11 a .22 style revolver, a western style revolver, in a  
12 leather holster.

13 Q Okay. Can you just describe that  
14 holster for us?

15 A It was detailed; it looked like someone  
16 had made it, you know, a leatherworker of some sort,  
17 had -- also had a little string that went around the  
18 trigger, I believe, to keep it from falling out of the  
19 holster.

20 Q Did you discuss this holster with Mr.  
21 Smith?

22 A No, sir; other than when we was getting  
23 ready to leave, he had -- he had put his weapons up.  
24 And he said this was his -- his baby, and that he had  
25 looled the holster himself.

wife and children?

A Yes, I did.

Q And if you would, what was the amount of insurance on his wife, Judy Smith?

A The amount on Judy Smith and himself was \$10,000.

Q Okay. On her it would be \$10,000.

A \$10,000. Normal death, \$20,000, accidental.

Q And Chad and Jason Burnett, what was the value -- the amount on the life of Chad Burnett?

A \$4,000.

Q And Jason Burnett?

A \$4,000.

Q And when was this policy obtained?

A It was obtained August 28th, 1985.

Q Okay. And how was it paid?

A Paid by monthly.

Q Monthly?

A Yes, ma'am.

Q Okay. And do your records reflect when the last payment was made?

A I believe it was September of -- of last year.

Q September, 1989?

1 Q Okay. Did he ever talk about his hobby  
2 that he had, about anything that he could do as far as  
3 a craft or a hobby?

4 A Yes, he mentioned he was into leather  
5 crafts. He had showed me a belt that he had made.

6 Q Okay. What did you notice that was  
7 unusual to you about the belt?

8 A The belt had said "Frank" on it and--

9 Q And what name did you know Mr. Smith by?

10 A Oscar.

11 Q Did you question him about why he had a  
12 belt with the name "Frank" on it?

13 A Yes, I did.

14 Q What did he tell you?

15 A He said his real name was Frank.

16 Q And that was the first time that you had  
17 known that?

18 A Yes.

19 Q Back in September of 1989 what type of  
20 car was he driving?

21 A It was a white Ford, an old squad car.

22 Q And do you recall when his wife and two  
23 stepchildren were killed on October the 1st?

24 A Excuse me?  
25

Q Do you recall when his wife and  
1 stepchildren were killed on October the 1st, 1989?

2 A Yes, I do.

3 Q Prior to their death, did you and Mr.  
4 Smith have any unusual conversations?

5 A Yes.

6 Q Okay. When was the first one?

7 MS. PARSONS: Your Honor, I'd object to  
8 this and ask for an out of jury hearing. Hearsay.

9 THE COURT: Okay. Let the jury --  
10 instead of us going out -- well, let's just --

11 GEN. THURMAN: We can have a bench  
12 conference, Your Honor.

13 THE COURT: Let's let the jury step out  
14 here for a minute. Why don't you all go this way where  
15 you don't have to go up the steps, and I'll see you in  
16 just a couple of minutes.

17  
18 (WHEREUPON, the jury retired from  
19 open court at 9:38 a.m., and the  
20 further following proceedings  
21 were had, to-wit:)

22  
23 THE COURT: Okay. Ms. Parsons, what is  
24 the basis of your objection?

25 MR. NEWMAN: Your Honor, we --



1 (WHEREUPON, the jury returned  
2 to open court at 9:46 a.m.,  
3 and the further following  
4 proceedings were had, to-wit:)

5 THE COURT: Okay. Go ahead, Mr.

6 Thurman, please.

7 Q (By Gen. Thurman) Mr. Merritt,  
8 approximately a month before the death of  
9 Judith Lynn Smith and her two sons, did you and Mr.  
10 Oscar Frank Smith have a conversation?

11 A Yes.

12 Q About this?

13 A Yes.

14 Q And what was the nature of that  
15 conversation?

16 A He had asked me at that time if I had  
17 knew anyone that would kill his family.

18 Q Where did you live prior to coming to  
19 work?

20 A Chicago.

21 Q How long did you live there?

22 A Eight years.

23 Q Okay. What was your response at that  
24 time?

25

1 A I didn't really take him serious at the  
2 time.  
3 Q What did you say?  
4 A What did I say to Mr. Smith?  
5 Q Yes.  
6 A I just told him that I didn't know of  
7 anyone.  
8 Q Did he then approach you again?  
9 A Yes, two weeks later.  
10 Q And what was the nature of that  
11 conversation?  
12 A He had told me he would offer  
13 \$20,000 to have someone kill his family.  
14 Q Did he specify who that time in the  
15 family?  
16 A Judy Smith and the two stepchildren.  
17 Q And did he specify anyone that was not  
18 supposed to be killed?  
19 A Yes, his two twins.  
20 Q What was your response at that time?  
21 A At that time I told him I think he has  
22 serious problems, and I thought he should get  
23 professional help.  
24 GEN. THURMAN: That's all the  
25 questions I have.  
THE COURT: Okay. Mr. Newman.

1 Q Okay. And where did he request you to  
2 go with him when he approached you?

3 A Well, he was wanting me to go for a ride  
4 with him at break time.

5 Q And did you do that?

6 A Yes, I did.

7 Q Did you just get out and ride around the  
8 countryside there?

9 A Yes, sir; we just rode around.

10 Q Okay. And what did Mr. Smith say to you  
11 while you were riding around at break time?

12 A Well, he said that we could take care of  
13 each other's problem, that he'd kill my wife and I'd  
14 kill his wife.

15 Q Okay. What was your response?

16 A I told him it was a joke. I didn't  
17 really mean it.

18 Q Okay. Did he later come by your house?

19 A Yes, sir.

20 Q And how long was that after this first  
21 conversation?

22 A I think it was about two weeks; I don't  
23 really remember, but it's --

24 Q Were you living in Lebanon at that time?

25 A Yes, sir.

Q So he came all the way to Lebanon?

1 A Yes, sir; he did.

2 Q Okay. And did you have a certain

3 conversation at that time?

4 A Yes, sir; he brought this thing up

5 again, said he was real serious about this and wanted

6 to do it. And he told me that we could set the thing

7 up where I -- I could be gone, and he'd do mine first,

8 and then I could be out of town, somewhere where I

9 wouldn't be suspected of it. And I -- I could do his,

10 and he'd do the same way.

11 Q He would go out of town while you killed

12 his --

13 A Yes, sir.

14 Q Did he talk about whether he could pay

15 anybody?

16 A Well, I -- I told him that, you know,

17 this is a joke with me. I told him this is a joke,

18 totally. And he said, well, I could make it worth your

19 while. He said, I'd get some money up. And I just

20 told him I -- I didn't want to talk about it anymore.

21 I refused to have anymore to talk about it at all.

22 Q So you terminated all that conversation?

23 A Yes, sir.

24 GEN. THURMAN: That's all the questions

25 I have.

1 Q Did you have conversations with Mr.  
2 Smith?  
3 A Yes, sir.  
4 Q And were you all working together after  
5 Judy and Frank Smith were separated in June of 1989?  
6 A Yes, sir.  
7 Q And during that period of time, prior to  
8 her death, did you have an occasion to listen to  
9 certain phone conversations between Judy Smith and  
10 Oscar Frank Smith?  
11 A Yes, sir. I did.  
12 Q And how did you know it was Oscar Frank  
13 Smith on the other line?  
14 A Because he called Judy, and when he  
15 called, she would get real upset, and she would ask me  
16 to listen in.  
17 Q Okay. Did you recognize his voice?  
18 A Yes, sir.  
19 Q And why were you listening in?  
20 A Because he had threatened to kill her,  
21 and she asked me to be a witness to this.  
22 MR. DEAN: Your Honor, if we could  
23 approach the bench, please.  
24 THE COURT: Let's just step in the  
25 office for a second. Hang in there with me just for a

1 it was about six weeks prior to that.

2 THE COURT: All right.

3 THE WITNESS: Four to six weeks. I'm  
4 not sure of the dates.

5 THE COURT: Okay. Sometime in the  
6 Summer of 1989?

7 THE WITNESS: Yes, sir.

8 THE COURT: Go ahead, Mr. Thurman.

9 Q (By Gen. Thurman) So is that the first  
10 time you started listening to the calls?

11 A Yes, sir.

12 Q In the Summer of 1989?

13 A Yes, sir.

14 Q And how many different calls did you  
15 actually listen in on?

16 A Around 12 to 15 different calls.

17 Q And was there anything said in a  
18 threatening nature at all during any of these calls?

19 A Pardon me now?

20 Q Were there any threats made during these  
21 calls?

22 A Yes, sir; there was.

23 Q Okay. Can you just describe what was  
24 said?  
25

1 A For instance, one night Frank called on  
2 a Friday night. And we were always busy on Fridays.  
3 Judy called me to the phone, and I went there. And I  
4 listened to him, and he said that she would never know,  
5 her and I neither, when he was sitting across the road  
6 at Shoney's ready to blow her brains out.

7 Q How many times over the period of this  
8 -- these calls was Judy Smith's life threatened?

9 A Oh, at least 12 of those calls he  
10 threatened her life.

11 Q Okay. How would he threaten to kill  
12 her?

13 A Everytime but one he threatened to shoot  
14 her. Once he threatened to stab her.

15 Q During these calls were any references  
16 made to her sons, Chad and Jason Burnett?

17 A One time, he threatened to kill Chad and  
18 Jason, because he said that she was better to them than  
19 he was -- she was his twins.

20 Q Was that towards the end of these calls  
21 or back at the first of the calls?

22 A Probably about the third to fourth week.

23 Q So these calls were continuing, ongoing?

24 A Yes, sir.

25 Q And when was the last conversation you  
heard?

Q Okay. Did you do that?

1 A Yes, sir.

2 Q Okay. And who was present when you  
3 arrived?

4 A When I arrived at the residence of Oscar  
5 Smith, two young twin boys that was described to me,  
6 and Mr. and Mrs. Smith, Oscar's parents, and I don't  
7 recall who else. Sergeant on patrol, he was with me  
8 when I arrived.

9 Q Okay. And did you request Mr. Smith to  
10 do anything at that time?

11 A Yes, sir; I stopped in the drive of the  
12 house and called him over to my car and told him that  
13 Metro officers had contacted me, and that they wanted  
14 to talk to him, and that I asked him to get in the car  
15 with me and ride to the interstate to meet with the  
16 Metro officers.

17 Q Did he do that?

18 A Yes, sir.

19 Q At any time did he ask you why they  
20 wanted to question him or anything about that?

21 A No, sir.

22 Q Did you at any time tell him why they  
23 wanted to question him?

24 A I told him that I did not know what the  
25 reason was that they'd called and wanted to talk to



1 A Originally, I was dispatched on the  
2 call, the original call.

3 Q But once you got to the scene, where  
4 were you then sent?

5 A To the City of Springfield.

6 Q And what was your purpose in going to  
7 the City of Springfield?

8 A Myself and Detective Mike Smith went to  
9 the City of Springfield or Rutherford County or  
10 Robertson County to interview Mr. Oscar Frank Smith.

11 Q Okay. And had you previously requested  
12 ahead for assistance by Detective Bennett?

13 A Yes, sir.

14 Q And where did you observe Mr. Smith?  
15 Where did you find Mr. Smith?

16 A When we got off the interstate,  
17 Detective Bennett was there with Mr. Smith. We then  
18 went from that location prior to talking to him to the  
19 Robertson County Sheriff's Department.

20 Q And at that time did you advise Mr.  
21 Smith why you wanted to talk to him?

22 A No, sir.

23 Q Did he ask you at that time why you  
24 wanted to talk to him?

25 A No, sir; he did not.

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to come back on in and just have a seat.

(WHEREUPON, the jury returned  
to open court at 12:33 p.m.,  
and the further following  
proceedings were had, to-wit:)

(The witness retakes the stand.)

THE COURT: Okay. Go ahead, Mr.  
Thurman.

GEN. THURMAN: Thank you, Your  
Honor.

Q (By Gen. Thurman) Detective Bernard, I  
think we were to the juncture where you were at the  
police department in Springfield; is that correct?

A Yes, sir.

Q And at that time, had you advised Mr.  
Smith why you were interviewing him, what the  
circumstances were?

A No, sir; I had not.

Q Had he asked you at any time why you  
were interviewing him?

A No, sir; he did not.

1 Q Did he tell you how long it took him to  
2 get there?

3 A Approximately seven hours.

4 Q Okay. Did he tell you why it took that  
5 length of time?

6 A He stated that he ran into some fog on  
7 the way.

8 Q How long did your interview last with  
9 him?

10 A I believe it was 35 minutes.

11 Q And during this initial interview, did  
12 you notice anything unusual about the interview?

13 A During the interview itself, I noticed  
14 that Mr. Smith was shaking, he was smoking quite a bit.  
15 During the interview, the words -- he referred to the  
16 victim as well as any incidents concerning her in the  
17 past tense. He stated that we were getting back  
18 together, things were going well. At one point he  
19 mentioned a marriage counselor, that they were seeing a  
20 marriage counselor. And he stated that we were seeing  
21 a marriage counselor. When I asked him when did they  
22 stop seeing the counselor, he stopped for a few minutes  
23 and stated we're still seeing the counselor.

24 Q He used the word "were" repeatedly?

25 A Yes, sir; he did.

Q And did you observe any other unusual  
1 behavior after he was -- when did you advised him of  
2 why you were asking him the questions?

3 A Approximately 35 minutes after we  
4 originally walked in and I identified myself.

5 Q Okay. What was his reaction when you  
6 advised him of his wife's death and the childrens'  
7 deaths?

8 A He didn't ask any questions about the --  
9 about the children; he didn't ask any questions about  
10 the victim, as such as what happened or where it  
11 occurred or anything such as this.

12 At one point Detective Smith, Detective  
13 Bennett had gone to separate rooms, and I'd stepped  
14 outside. And we asked Mr. Smith to sit in the little  
15 waiting room area, which is right in the front door of  
16 the Sheriff's Department. I was standing outside, in  
17 the parking lot, approximately 35, 40 feet away. There  
18 were some other deputies down a ways from the front of  
19 the door. Mr. Smith was sitting in a straight chair by  
20 the front door, with the door open. I'd walked into  
21 the shadows and was watching him, to make sure that  
22 either he didn't try to leave or run away or whatever,  
23 due to the fact that we'd just told him about this  
24 death. I observed him smoking a cigarette with his  
25 left hand. He would smoke the cigarette, would take a

1 draw or two off the cigarette and hold it in these two  
2 fingers here. Then he would take these two fingers and  
3 blow smoke onto these fingers here and then rub them in  
4 each eye, like this (indicating). And then he called  
5 me over, called -- said, Detective Bernard, and asked  
6 me, said, "tell me it's not true," assuming -- meaning  
7 to the -- referring to the deaths. At that time he did  
8 have a tear on each eye.

9 Q And did you observe any injuries on him  
10 that particular night?

11 A Yes, sir; I did.

12 Q And what were those, please?

13 A There was some abrasions on his right  
14 hand, his right elbow, and his left back and left  
15 shoulderblade.

16 Q I'd hand you these photographs that have  
17 been previously marked 11-K, 11-I, and 11-J, and see if  
18 you can identify those.

19 (Three (3) photographs handed  
20 to the witness.)

21  
22 THE WITNESS: Yes, sir; these were the  
23 photographs that I requested to be taken of Mr. Smith,  
24 of the injuries that I noted.  
25

Q (By Gen. Thurman) If you could,  
1 Detective, could you step down before the jury and just  
2 point out the injuries that you've just testified to?  
3

4 (WHEREUPON, the witness steps  
5 down from the witness stand  
6 and stands at the jury box.)  
7

8 THE WITNESS: The injury here is an  
9 abrasion to the outside right arm (indicating on  
10 photograph), in the area of the elbow (holding up  
11 photograph).  
12

13 These are two --

14 Q (By Gen. Thurman) You might want to  
15 come on down in front where everyone can see you.

16 THE COURT: Come right in the middle,  
17 maybe, if you would.

18 THE WITNESS: These are three scratches  
19 to Mr. Smith's right hand, three abrasions. There's a  
20 half moon-shaped abrasion to the right little finger.  
21 There's an abrasion on the top knuckles of the right  
22 hand, and another abrasion or scratch between the --  
23 the thumb and the first finger (holding up  
24 photograph).  
25

26 This is Mr. Smith's back, on the left  
27 side. This would be the left side of his back, what

1 appears to be an abrasion or a scrape. At the top  
2 here, the left shoulderblade is the beginning of what  
3 appears to be a bruise (holding up photograph).

4 In case anyone didn't see it at the  
5 beginning, this is his right arm, his right elbow, and  
6 the outside (holding up photograph).

7 Q (By Gen. Thurman) Go back.

8 (WHEREUPON, the witness returns  
9 to the witness stand.)

10  
11 Q (By Gen. Thurman) Did you ask Mr. Smith  
12 about a knife, about whether he carried a knife?

13 A Yes, sir; I did.

14 Q And what was his response?

15 A Never.

16 GEN. THURMAN: That's all the questions  
17 I have.

18 THE COURT: Give him the pictures over  
19 there.

20 MR. DEAN: Your Honor, I'd request any  
21 Jencks material of this witness.

22 THE COURT: Mr. Thurman.  
23  
24  
25

(Jencks material handed to  
Mr. Dean.)

CROSS-EXAMINATION

BY MR. DEAN:

Q Detective Bernard, you asked Mr. Smith about what he did on Monday, I guess the day that you were interviewing him; is that correct?

A Yes, sir.

Q And I think your report would reflect that he told you that he had slept for approximately two and a half hours?

A I believe it was a little bit longer than that. I think it was somewhere between 3:00 and 5:30 or 6:00.

Q 5:30 to 6:00?

A I believe it was about 6:00, yes, sir.

Q If I could show you the report, and ask you if you could identify this copy of the report you prepared?

A Yes, sir; it is.

Q Would you look at approximately -- I think it's the second or the third paragraph from the bottom?



October.

1 Q Detective Flair, I'd have -- hand you  
2 this item, which has been identified as Exhibit 21 for  
3 identification only, and ask you if you can identify  
4 that?

5 A That's correct, ma'am. This is the  
6 holster that I found inside Mr. Smith's trailer.

7 Q Where exactly was that located?

8 A This was hanging in the -- I would call  
9 it the main or master bedroom, if you will, of the  
10 trailer, hanging in -- in the wall -- or I'm sorry --  
11 on the wall.

12 Q And why was it that you collected that  
13 particular item?

14 A Well, there was -- at the original crime  
15 scene, it was learned that there was a weapon, a pistol  
16 used. And we were trying to ascertain, possibly, if  
17 this -- this holster could have, you know, be involved  
18 or if we recovered the pistol at a later date.

19 Q Did you ever -- did you recover a pistol  
20 with that?

21 A No, ma'am; I did not.

22 GEN. BLACKBURN: Your Honor, I'd request  
23 at this time that that be made an exhibit to his  
24 testimony.

25 THE COURT: Okay.

1 (State's Exhibit No. 21,  
2 holster, marked and filed.)  
3

4 (Pause in the proceedings while  
5 Gen. Blackburn shows two (2) belts  
6 and a leather item to defense counsel.)  
7

8 Q (By Gen. Blackburn) Detective Flair,  
9 I'll hand you three other items, and ask you if you can  
10 identify those?  
11

12 A Yes, ma'am; these are the three other  
13 items that I recovered from the -- inside the trailer.  
14 They were as well, if you will, in the main bedroom of  
15 the trailer.

16 Q And this is the defendant's trailer?

17 A That's correct; yes, ma'am.

18 Q If you would, what -- describe what each  
19 of those items are.

20 A Well, this is just a leather work, and  
21 it has, if you will, imprinted on it, "Home Sweet  
22 Home." The other two are -- appears to be trousers, a  
23 belt for trousers, and it's got the word "Frank"  
24 imprinted on the back of both of them.  
25

Q Okay. If you would, hold them up to the  
1 Ladies and Gentlemen of the Jury.

2 A (Holding up items).

3 Q And both of the names "Frank" are  
4 imbedded in there --

5 A Printed -- that's correct. "Frank"  
6 here, F-r-a-n-k on the back on that one and this one as  
7 well.

8 Q And where exactly did you find those in  
9 the trailer?

10 A These were in the bedroom, hanging on  
11 the wall.

12 GEN. BLACKBURN: Your Honor, if that  
13 could be made Collective Exhibit next in order.

14 THE COURT: Okay.

15  
16 (State's Exhibit No. 23, two  
17 (2) belts and leather-worked  
18 item, marked and filed.)  
19

20 Q (By Gen. Blackburn) The court officer  
21 is going to hand you this item and ask you if you would  
22 look at that and see if you could identify that?

23 A Yes, ma'am; this is a .22 caliber live  
24 round and has a slip of paper on the inside of it with  
25 my initials, and it was behind -- this was found behind

1 the gun case of the main living area. It's got it  
2 marked here, and that is my writing, and that's how I  
3 tagged it when I located it.

4 Q And it's a live .22 round?

5 A Yes, ma'am. That's correct.

6 GEN. BLACKBURN: Your Honor, if that  
7 could be State's Exhibit next in order.

8 THE COURT: Okay.

9  
10 (State's Exhibit No. 24, live  
11 .22 round, marked and filed.)

12  
13 Q (By Gen. Blackburn) Now, there is a box  
14 that I need to have handed to you. It's sort of heavy,  
15 and ask you if you can look in that and see if you can  
16 identify the items that are in that box.

17 A Yes, ma'am; these are, if you will,  
18 leather-working tools. There are several leather-  
19 working tools that are used in leather work. They've  
20 also got -- they're several pieces of metal work that  
21 you use as a stamp to spell out a word. Like here's an  
22 "E", and there's several -- an alphabet, if you will.  
23 And there's numerous other -- I don't know the correct  
24 pronunciation or the correct term for them, but I would  
25 call it something like a stamp. If you took this and

put it on leather, hit it so it would have an  
1 impression of whatever design was here. And this  
2 happens to be a bird. And there's --

3 Q Where did you locate those items?

4 A These were found in -- in an  
5 outbuilding about 15 to 20 feet from Mr. Smith's  
6 trailer.

7 GEN. BLACKBURN: If you would -- Your  
8 Honor, that would be the State's next exhibit.

9  
10 (State's Exhibit No. 25, box  
11 containing assorted leather-  
12 working tools, marked and  
13 filed.)  
14

15 Q (By Gen. Blackburn) Detective, let me  
16 hand you some photographs.

17  
18 (Pause in the proceedings while  
19 Gen. Blackburn shows five (5)  
20 photographs to defense counsel.)  
21

22 Q (By Gen. Blackburn) And see if you can  
23 identify them.  
24  
25

1 (Five (5) photographs handed  
2 to the witness.)

3 Q (By Gen. Blackburn) A series of five  
4 photographs and see if you can look at those  
5 photographs and see if you can identify them.

6 A The first three photographs are  
7 photographs of tennis shoes that I extracted from the  
8 trailer there at Mr. Smith's residence. The other two  
9 photographs is a partial piece of a tennis shoe that  
10 was found in what I would call a small firepit,  
11 located just behind the trailer, another 15 to 20 feet  
12 away from Mr. Smith's trailer.

13 Q Okay. And what was your purpose for  
14 collecting those particular items?

15 A To see possibly if there was any type of  
16 link back to the original crime scene.

17 Q And you were collecting all the tennis  
18 shoes that you found at the trailer?

19 A Well, first of all, it was rather odd  
20 that there was a tennis shoe that was -- that was  
21 partially burned, as it -- maybe it might have been  
22 thrown in the fire and could have been to be destroyed  
23 or whatever. We didn't collect any and all shoes, but  
24 the tennis shoes we were interested to see if, again,  
25

1 DIRECT EXAMINATION

2 BY GEN. BLACKBURN:

3 Q Please state your name.

4 A My name is Mona Gretel Case Harlan.

5 Q You might have to speak up, both of us  
6 have a tendency to talk a little low. What is your  
7 occupation?

8 A I am a licensed physician in the State  
9 of Tennessee, currently serving as an Assistant  
10 Davidson County Medical Examiner.

11 Q And what is your educational background?

12 A My educational background is that of  
13 high school, college, medical school, finishing in  
14 1974. I did a pathology residency at the University of  
15 Tennessee in Memphis. I finished that in 1978, became  
16 anatomic and clinical board certified, worked as an  
17 Assistant Shelby County Medical Examiner while there,  
18 and worked as an Assistant Davidson County Medical  
19 Examiner part time beginning in the Fall of 1983 and  
20 full time beginning in May of 1986.

21 Q And as part of your duties as an  
22 Assistant Medical Examiner, are you required to do  
23 autopsies?

24 A I do autopsies, quite a few of them.

25 Q About how many?

1 A This year it's going to be about 200.

2 Q Okay. And during the course of that,  
3 are you required to determine the cause of death?

4 A Yes, this is our primary reason for  
5 doing the autopsy, is to determine the cause and manner  
6 of death.

7 Q And as your job as an Assistant Medical  
8 Examiner, are you also required to testify with regard  
9 to the results?

10 A Yes, I am.

11 Q Okay. And have you been so qualified as  
12 an expert in your field of forensic pathology?

13 A I have been qualified in courts in  
14 Davidson County, additional counties in Tennessee and  
15 in Kentucky, as an expert in forensic pathology.

16 GEN. BLACKBURN: Your Honor --

17 THE COURT: Excuse me just a minute.  
18 I'm not sure -- my clerk has reminded me whether or not  
19 Dr. Harlan was sworn in the presence of the jury?

20 THE WITNESS: I was not.

21 THE COURT: I think she wasn't. So let  
22 me ask her now just for the purpose of the record and  
23 for the jury's benefit if you would be sworn, Dr.  
24 Harlan.

25



1 (The witness is sworn by the  
2 Clerk.)

3 GEN. BLACKBURN: Your Honor, at this  
4 time I'd offer Dr. Harlan as an expert in her field.

5 THE COURT: All right. Mr. Dean, do you  
6 have any questions?

7 MR. DEAN: No problem.

8 THE COURT: Okay. Dr. Harlan has  
9 testified as an expert in this Court a number of times.  
10 And she will be allowed to testify today in her field.

11 GEN. BLACKBURN: Okay.

12 THE COURT: Okay. Go ahead.

13 Q (By Gen. Blackburn) Dr. Harlan, in  
14 performing autopsies, would you just explain to the  
15 Ladies and Gentlemen of the Jury exactly what -- what's  
16 required or what you do during the course of that.

17 A Yes. An autopsy consists of several  
18 phases. First, we try to view the body as soon as  
19 possible after its discovery, take into account  
20 surroundings, clothing, etc. We document our findings  
21 with photographs. We then remove the clothing, weigh  
22 and get a height of the body, examine externally for  
23 any injuries present externally, and then do a complete  
24 autopsy, in which we examine the contents of the head,  
25 the neck, the chest and the abdomen.

1 With examination of the organs, we also  
2 retain small pieces of the tissue, which we have made  
3 into microscopic slides that we examine beneath the  
4 microscope. In addition to that, we also take  
5 pertinent samples for such things as cultures to see if  
6 there are bacteria growing in cases in which we suspect  
7 an infection and toxicology samples to determine what  
8 drugs or alcohol or anything such as that are present  
9 and to determine the blood type.

10 Q And during the course of all this, first  
11 of all, are you required to do autopsies where the  
12 cause of death is suspected to be a homicide?

13 A Yes, I am.

14 Q Okay. And that would be in all cases?

15 A In almost all cases.

16 Q In almost all cases. Let me direct your  
17 attention to October the 2nd of 1989, and ask you if  
18 you had an occasion to do -- to perform an autopsy on  
19 the bodies of Judith Smith, Jason Burnett and Chad  
20 Burnett?

21 A I performed autopsies on Judith Lynn  
22 Warden Smith and -- beginning on October the 3rd at 5  
23 p.m. I did an autopsy on Chad Altman Burnett  
24 beginning October the 3rd at 11 a.m., and on Jason Don  
25 Burnett, I did an autopsy beginning at 1:30 a.m., on

October the 4th.

1 Q Had you, though, been made aware of  
2 their being deceased, though, on October the 2nd? Had  
3 your office been notified of the discovery of their  
4 bodies on October the 2nd?

5 A Yes, we had.

6 Q And had you or any individual of the  
7 Medical Examiner's staff gone to the scene at 324 Lutie  
8 Street?

9 A Yes, my husband Charles did.

10 Q And did you go to the scene at that  
11 time?

12 A Not at that time.

13 Q Did you later go to the scene?

14 A I did go to the scene.

15 Q Okay. If you would, you indicated that  
16 you did the autopsy on Judith Smith first; is that  
17 correct?

18 A I believe I did the one on Chad Altman  
19 Barnett or Burnett first. Yes.

20 Q Why don't we just take them in the order  
21 that you did them.

22 A All right.

23 Q If you would, you indicated that the  
24 first thing you do is you make a visual observation  
25 analysis?

1 A Yes. I examine the body clothed,  
2 unclothed, and photograph the body, make diagrams and  
3 pertinent notes concerning my findings at that point.

4 Q All right. Describe when you first  
5 viewed the body of Chad Burnett what you observed.

6 A On Chad Burnett, as I first examined  
7 him, the body was still clothed, had quite a bit of  
8 blood on the clothing. I charted what injuries I could  
9 see easily with the body in that shape, weighed and  
10 measured him, then removed the clothing, still charting  
11 the body and then cleaned off the skin so that I could  
12 get a better look at the wounds to the skin.

13 Q And what were the wounds that you  
14 observed?

15 A He had several different types of  
16 wounds. He had multiple gunshot wounds, one of which  
17 that I called Gunshot Wound A, which was to the inner  
18 edge of the left eyebrow. And it was a contact type of  
19 gunshot wound, which shows a small bruising of the  
20 orbit or orbital contusion beneath it.

21 Q Dr. Harlan, let me interrupt you. What  
22 is a contact gunshot wound?

23 A A contact gunshot wound is a wound in  
24 which the muzzle of the gun is against the skin's  
25 surface.

1 Q Okay. So that the actual muzzle of it  
2 would be pressed against the skin's surface.

3 A In Chad's case, it was against the  
4 skin's surface but was not in tight contact.

5 Q Okay. And you can tell the difference?

6 A Yes, I can.

7 Q What was the next observation that you  
8 noticed?

9 A I then examined the remainder of the  
10 body and found another gunshot wound, which I called  
11 Gunshot Wound B, which was to the right upper chest.  
12 And it was also a contact gunshot wound. In addition  
13 to this wound, which had no exit wound, nor did the  
14 Gunshot Wound A, I discovered another gunshot wound to  
15 the top of the right shoulder, which I called Gunshot  
16 Wound C, which had an exit wound to the back of the  
17 right shoulder, actually base of the neck area, which I  
18 called Gunshot Wound D.

19 Gunshot Wound C was somewhat different  
20 from the other two gunshot wounds, in that it was not  
21 straight in, went at a -- a marked angle and did not  
22 show obvious gross powder present.

23 Q Okay. So you've got the contact wound  
24 to the -- to the face.

25 A Correct.

1 Q One to the chest area, and then the  
2 other is not a contact wound?

3 A The other has to have been fired from  
4 more than two feet away or had to have gone through  
5 some other target first. And I did not find a defect  
6 in his shirt to explain that.

7 Q So he had three separate gunshot wounds  
8 to the body of Chad Burnett?

9 A We do.

10 Q What were the other -- the injuries that  
11 you could observe?

12 A In addition to those wounds, he had  
13 multiple stab wounds which were in three different  
14 types. Some of these were stab wounds that  
15 appeared to have been caused by something that was very  
16 sharp and needle-like and elongated and had no side  
17 edge to it, something such as an ice pick or an awl or  
18 a -- something sharp and pointed. He had one such  
19 wound at the chest, beneath the area where the  
20 clavicles come toward the midline here (indicating on  
21 self), and had a small trail-off from that, a little  
22 abrasion down towards the right side.

23 He had multiple additional -- additional  
24 small abrasions but none that were definitively made by  
25 a puncture type instrument. In addition to these, he

1 had several stab wounds that were made by something  
2 with a blade shape to it. One of these was in the --  
3 what we call the lumbar area of the back, in the small  
4 of the back, above the pelvis, in the midline, and was  
5 orientated across or transverse in comparison to the  
6 body.

7 Two others were just above and on either  
8 side of the umbilicus or belly button, made with a  
9 smiliar type of instrument, and a third type of injury  
10 from a sharp object such as that was also present, but  
11 this was a laceration type injury or series of  
12 laceration type injuries to the neck. And in these  
13 there were a small abrasion, superior, then a bigger  
14 laceration or incision that had some frayed edges to  
15 it. Then along its left edge it had another small,  
16 what we call abrasion or scrape, and then beneath and  
17 about mid-neck or high mid-neck an even larger area of  
18 slashing type injury with edges on it that suggested  
19 more than one cut.

20 Q Dr. Harlan, let me ask you this. After  
21 you are making these visual observations, are you  
22 documenting these on a chart in some manner?

23 A Yes, I did, at the -- at the autopsy,  
24 document these on Special Chart 11, which is a form  
25 that we use, and Special Chart 8, which is the second  
form.

1 (Chart is brought to the front  
2 of the jury box.)

3  
4 Q (By Gen. Blackburn) Dr. Harlan, can you  
5 look at this chart--

6 MR. NEWMAN: Your Honor, if I could  
7 interrupt, with the Court's permission, could I move  
8 around so that I could see?

9 THE COURT: Sure, move right over here  
10 in this chair, if you want to.

11 Q (By Gen. Blackburn) And ask you if this  
12 appears to be an enlargement of that chart that you  
13 have prepared with regard to Chad Burnett?

14 A Yes, it is.

15 Q If you would, step down in front of the  
16 chart and point out to the Ladies and Gentlemen of the  
17 Jury the wounds that you've just been describing.

18  
19 (WHEREUPON, the witness steps  
20 down from the witness stand  
21 and stands at the board.)

22  
23 THE WITNESS: This is a separate chart  
24 that I used that simply indicates the relative shapes  
25 of the wounds, the size of the injuries. I try to



1 tabulate their inches above the heel. And Chad was a  
2 total of 170 pounds, that is, 170.6 pounds, and 71  
3 inches tall, which would be 5'11".

4 Q (By Gen. Blackburn) So both of these  
5 charts are with regard to Chad Burnett, this being just  
6 a documentation of the larger chart of the type of  
7 wounds?

8 A Yes.

9 Q You use this in conjunction with that?  
10 If we could scoot it over, to this side. Now, Dr.  
11 Harlan, if you would, go through each one of the wounds  
12 that you observed on Chad Burnett and just tell the  
13 Ladies and Gentlemen of the Jury about each of them.

14 A The gunshot wounds are --

15 THE COURT: Dr. Harlan, would you like a  
16 pointer?

17 THE WITNESS: -- not on this chart;  
18 they're on this chart.

19 GEN. BLACKBURN: Do you need a pointer?

20 (The witness handed a pointer.)

21  
22 THE WITNESS: The gunshot wound to the  
23 inside of the left eyebrow is here (indicating on  
24 diagram) and the small contusion is there (indicating  
25 on diagram).

1                   The gunshot wound at the end of the  
2 shoulder went in here at an angle, is diagrammed here  
3 (indicating on diagram), and exited in the back here  
4 (indicating on diagram), making a small, irregular  
5 slit. That's through the right shoulder. It did not  
6 go across the midline. The gunshot wound that went  
7 into the right chest, from front to back, basically,  
8 and it had no corresponding exit wounds.

9                   The sizes of the wounds are similar but  
10 not exact. The minimal size, which is fairly  
11 important, is .28 inches of Gunshot Wound B to the  
12 chest.

13 Q                   (By Gen. Blackburn) And why is that  
14 significant?

15 A                   Generally, a high speed projectile, like  
16 a bullet, will make a hole similar in size to the  
17 diameter of the bullet, unless it's going at an  
18 unusual angle.

19 Q                   Okay. And what does this one tell you  
20 about this particular kind of bullet?

21 A                   This -- this dimension here being a .28  
22 inches tells me that it's a fairly small bullet.

23 Q                   And did you recover the bullet from  
24 Gunshot Wound B?  
25

1                   A                   Yes, I did. I also recovered one from  
2 Gunshot Wound A. After the gunshot wounds, I described  
3 the puncture type wounds just below the base of the  
4 throat here, which was designated Gunshot Wound HB --  
5 or Stab Wound HH, which has a central hole or a little  
6 bit eccentric hole and then kind of a tadpole type tail  
7 going across. So it's made by a small puncture type  
8 instrument.

9                   The wounds to the neck are diagrammed  
10 here (indicating on diagram). They were in more detail  
11 and an abrasion which I didn't designate differently, a  
12 small superficial laceration, which I designated II,  
13 and then Laceration EE and SS, being a large  
14 laceration. This one is .9 centimeter or .9 inches by  
15 3.7 inches. This one is .85 inches, as the head is  
16 turned slightly away, with length unaffected by that  
17 motion of 4.1 inches and shows the regular edges  
18 suggesting that there are multiple strokes involved, as  
19 it does here (indicating on diagram).

20                   Q                   Okay. Now, the irregular edged multiple  
21 strokes of the cutting instrument?

22                   A                   That's correct.

23                   Q                   And this would have to be a sharp  
24 instrument, such as a knife?

25                   A                   This would have to be something with a  
decent edge to it.

1 Q Can you tell whether or not it would  
2 have a serrated edge or is it smooth or can you tell--

3 A I could not demonstrate any serrations  
4 to it. Sometimes there can be serrations shown, not  
5 always. I did not see any serrations in this. They're  
6 usually found at the point type edges of the wound. I  
7 did not find any abnormality to suggest that in any of  
8 his wounds.

9 The stab wounds to the abdomen just  
10 above and on either side of the belly button are  
11 indicated on this chart as well.

12 And BB, which is to the right side, and  
13 CC, which is to the left side, I've measured across the  
14 midline here (indicating on diagram). Their  
15 dimensions, they are open slightly. They do tend to  
16 have kind of a flat edge on each at opposite sides.  
17 This can occur with a knife that has a single edge. It  
18 is not specific for that, because the side could be  
19 duller on this side than on the other side. But the  
20 length on this one is a .72 inches. The length on this  
21 one is a .70 inches, which should, within a reasonable  
22 tolerance, given that the skin is somewhat elastic, be  
23 close to the measurement of the width of the blade that  
24 inflicted.

25

Q Okay. And again, did you notice any  
1 serrations on this?

2 A No, no serrations.

3 Q Okay.

4 A The stab wound to the back, the small of  
5 the back, is here (indicating on diagram). That one I  
6 designated JJ, and it is oriented across and again,  
7 shows its blunter end here and the edge here  
8 (indicating on diagram). These also have a bit of a  
9 tail. Those kind of curve with an inward motion that's  
10 slightly at a different angle from the outward motion,  
11 that actually slices the edge of the wound in two  
12 pieces.

13 Q Okay. So you can tell it goes in one  
14 place and comes out another?

15 A Well, slightly different. It makes a  
16 second small laceration as it comes out here  
17 (indicating on diagram), because this is a wound that  
18 goes basically inward on the body.

19 Stab Wound AA is back over here just at  
20 the edge of the left nipple (indicating on diagram) and  
21 has a small abrasion down from it.

22 Stab Wound AA is further over on the  
23 left side of the body, shows maximum dimensions of 1.38  
24 by 0.85 inches this direction (indicating on diagram),  
25 which, again, is similar to our dimension here

1 (indicating on diagram) and is a bit wider. I think  
2 that this knife actually did a bigger turn on being  
3 pulled out, and may not have been placed directly in  
4 and out, but instead may have moved slightly in the  
5 skin.

6 Q Could that be either the object moving  
7 or the -- Chad, himself, moving?

8 A Yes, and its location made it a little  
9 more amenable to movement, because there are ribs  
10 underneath there. So you're talking about glancing on  
11 ribs, which are tougher tissues to get through than the  
12 two on the abdomen.

13 Stab Wound DD here is way around on the  
14 right side of the chest here (indicating on diagram).  
15 And it's labelled here (indicating on diagram). And it  
16 also shows a tadpole-type shape. It is vertical in  
17 relationship to the body as opposed to these others,  
18 which are oblique.

19 There is one other knife-type injury,  
20 and that is Laceration GG. And the reason this is not  
21 a stab wound is because of where it is. It's on the  
22 left thumb here (indicating on diagram), and has sort  
23 of a triangular tear in the skin. By its slice, it has  
24 caused an action such as this (indicating) on the skin,  
25 so that this is a loose flap of skin that's been raised

1 from where it was introduced. And as it slid across  
2 got moved, okay?

3 This injury is suggestive of a  
4 defensive type of wound, because it is at an area where  
5 if one grabs for the blade, this would be pulled or  
6 pushed through that area of laceration.

7 Q So that would indicate that Chad  
8 Burnett was either, what, grabbing for the knife and  
9 trying to keep it from doing that? Is that what you're  
10 terming a defensive wound?

11 A Yes, a defensive wound means that he had  
12 his thumb in the way of the sharp edge of the blade,  
13 either trying to push, grab or some other motion. And  
14 so this -- this wound was inflicted with the edge of  
15 the blade.

16 Q How many different types of weapons can  
17 -- just from looking at the wounds, can you say  
18 inflicted the injuries to Chad Burnett?

19 A There would have to be a minimum of  
20 three, the gun, which could be similar caliber in all  
21 three wounds, a knife that had an edge to it, to cause  
22 all of these and this as well, and then something  
23 elongated and sharp without an edge to cause that.

24 Q Okay. So three different types of  
25 weapons?

A Yes.

1 Q If you would, with regard to Gunshot  
2 Wound A, when you were doing the autopsy, what sort of  
3 organs did that gunshot wound penetrate?

4 A Gunshot Wound A is -- went through the  
5 edge of the orbit at that point, broke the bone ahead  
6 of it, went through the frontal -- what we call the  
7 front part of the skull, the skull, and the temporal  
8 skull, which is around the temporal lobe. It went from  
9 front to back and really didn't go up or down as far as  
10 his head was concerned. It may have gone up or down as  
11 far as a floor was concerned, if the head had been  
12 tilted. And it really did not go to the right or the  
13 left, but, again, that may have been in relationship to  
14 his body, because the head may have been turned  
15 somewhat. I don't know. But at that wound, it caused  
16 injury by the bullet going through the area and by bone  
17 fragments being shoved away from the area by the broken  
18 bone from the impact of the bullet that cause injuries  
19 to the left bottom of the brain, the thinking part of  
20 the brain, the middle of the right frontal lobe, in  
21 other words, the whole left side of the thinking  
22 portion of the brain or cerebrum, the inside of the  
23 right lobe, and also caused bone fragment disruption of  
24 the left internal carotid artery as it was coming up  
25 through the skull. The left internal carotid artery in



1 Chad above and below the area of laceration and  
2 disruption was a fairly good sized vessel. And he  
3 would not have lived long after this artery was  
4 destroyed.

5 The bone fragments also went into the  
6 temporal lobe of the brain. The bullet itself and bone  
7 fragments damaged the olfactory, which is the smelling  
8 portion of the brain, left frontal lobe as well. And  
9 as a consequence of these injuries to the brain and its  
10 blood vessels, with hemorrhage, etc., the lungs started  
11 to develop the edema, became filled up with fluid,  
12 which occurs with penetrating injuries to the brain.

13 Q So, as a result of that, I mean this one  
14 was a fatal wound?

15 A This wound was a fatal wound. You could  
16 not even have a heart survive this from -- for very  
17 long. The internal carotid artery is a major vessel  
18 that is necessary, his thought processes, his control  
19 of his bodily functions would have been ended with the  
20 penetration of that -- of that artery.

21 Q The -- that's Gunshot Wound A?

22 A That's Gunshot Wound A.

23 Q What about Gunshot Wound B?

24 A Gunshot Wound B is the one to the right  
25 chest. Again, it's the contact gunshot wound.

1 Q Again, the barrel of the gun and muzzle  
2 being next to the skin?

3 A Correct. It went through the right  
4 second rib and right intercostal space, second  
5 intercostal, went through the right lung, went through  
6 the back of the chest wall between the fifth and sixth  
7 ribs and then became lodged beneath the skin, in the  
8 back, 57 inches above the heel.

9 Gunshot Wound D is 56 inches above the  
10 heel, so you can see it rose one inch in his body. It  
11 was also very slightly, from right to left, meaning  
12 that it went at some point at an angle, such as that  
13 (indicating). But basically it went from front to  
14 back.

15 Because of this wound, he not only bled  
16 into the right side of the chest, approximately two  
17 units worth, he also had the disruption of the lung and  
18 the bleeding from that and with continuing to breathe,  
19 so I do know that he was alive at this point. He  
20 developed air around the lungs and into the skin, which  
21 requires the pressure of continue to breathe or be  
22 resuscitated. There -- the area around the gunshot  
23 wound then felt like air-filled type fluid in the skin.

24 That's about it for Gunshot Wound B.  
25

1 Q Could Gunshot Wound B, was that also a  
2 fatal gunshot wound?

3 A Gunshot Wound B, if given long enough,  
4 could have killed him by itself. He at -- you know,  
5 initially, might have survived it had he had prompt  
6 medical care at a trauma center, first class trauma  
7 center with transfusions, chest tubes, etc., but he did  
8 live for a while with that wound, which was bleeding in  
9 the chest and causing air build up in the chest, was  
10 actually shoving the heart to the left and trying to  
11 fill up the left side of the space with everything  
12 being moved to the left, because the lung is deflating  
13 and air is being lost into the chest and out into the  
14 chest wall.

15 Q Gunshot Wound C, did it strike -- it's  
16 an in-out motion?

17 A Gunshot Wound C, in an old western  
18 terminology, would be considered a flesh wound. It did  
19 bleed into the tissues. It was there while he was  
20 alive. It was placed there while he was alive, but it  
21 went in the front, came out the back and did not strike  
22 a vital structure in passage. Okay? It did get  
23 muscle, it did get skin, and it did get fat, but no  
24 great big muscles and nothing major.

25 Q And a person could survive a Gunshot  
Wound C?

1 A It would take major medical problems  
2 to--

3 THE COURT: Hold on just a minute.

4 THE WITNESS: -- to die of Gunshot Wound  
5 C.

6 THE COURT: Excuse me a minute. I think  
7 one of the jurors needs to be excused just a moment, to  
8 be excused a moment. So why we just let whoever that  
9 juror is be excused, and we'll just wait here. I don't  
10 want to embarrass whoever it is, go right ahead, Ms.  
11 Montgomery. And you can go in my office. Mr.  
12 Himmelberg will show you, and then we'll be back  
13 whenever you get here.

14  
15 (Juror No. 2 is excused and  
16 then returns.)

17  
18 THE COURT: Okay. Go ahead.

19 Q (By Gen. Blackburn) Okay. Dr. Harlan,  
20 the --

21 A Gunshot Wound C, the only way he would  
22 have died of Gunshot Wound C is if he had had long-  
23 term complications like an infection that wasn't  
24 controlled. So it would have taken almost no  
25 medical care for him to have died.

Q And the damage done by the stab wound,  
if you would, just describe each of the stab wounds.

A If we go in order on that chart, Stab  
Wound AA, labelled that simply because I'd already used  
A, B, C and D for the gunshot wounds. So we went for  
double letters.

AA is just on the outside, anterior to  
left nipple. It's 5.35 inches to the left side of the  
midline. What it did was to go to maximal depth of 2.8  
inches. And I measured this through the tissue and  
into the left lung, which it did go into. And it went  
basically from front to back and left to right, meaning  
on him, approximately that angle (indicating). And  
it's oriented vertically, vertically (indicating).

Q When you say a depth of 2.8 inches, what  
does that tell you about the knife?

A The maximal depth of 2.8 inches tells me  
that it requires a blade about 2 and a half inches long  
to make it. If I have a blade with a hilt on it at 2  
and a half inches, I can actually indent the skin  
slightly if it's sharp enough and push it in slightly  
further than that. So it would have required a minimum  
blade of around two and a half inches.

Q So a minimum blade?

A Correct.

1                   Stab Wound BB here is here on him  
2       (indicating on diagram). This went into the abdomen,  
3       went through the skin into the peritoneum, which is the  
4       cavity around the gut, etc., and went into the right  
5       anterior liver. Its maximal depth was 2.35 inches, so  
6       it's slightly less deep than the first stab wound that  
7       I showed you. It's going from front to back and  
8       slightly from inferior to superior, which is angled  
9       upwards.

10                  The third stab wound is here (indicating  
11       on diagram) and is also obliquely oriented; in other  
12       words, it goes across like this (indicating on  
13       diagram). And it's going through the abdominal wall;  
14       it went through the front edge of the stomach. It did  
15       not go out the back side of the stomach. And I don't  
16       know how full his stomach was or how deep in the  
17       stomach it went, but it did go into his stomach. So  
18       its minimal depth is 1.8 inches. I can track it that  
19       far in, but because it's going into a stomach bubble  
20       and whatever else, I can't tell you how deep it went  
21       after that hollow edge of the stomach there. It was  
22       going from front to back, inferior to superior, and  
23       from left to right. So it's all three things at the  
24       same time. That's that one.

1 Stab Wound DD is to the right lateral  
2 chest. That's the point up here, almost in the armpit  
3 here. And that's got a maximal depth of 1.8 inches and  
4 went from right to left, slightly from up to down, and  
5 went from posterior to anterior. It came in from the  
6 side like. At the point where this went into the chest  
7 wall, it did not strike lung, and it's at an odd angle.  
8 So I don't know if it didn't strike lung because the  
9 lung was already being shoved over by the fact that it  
10 had a gunshot wound and was, therefore, deflated, or if  
11 it just missed the lung.

12 Stab Wound EE at the top of the two  
13 bigger lacerations or slice wounds to the neck. And it  
14 is not abundantly deep. It's 64 inches above the heel.  
15 It's mostly to the midline and left and did cause  
16 bleeding, but it did not get major life structures. It  
17 did get small vessels, so it did bleed. So I know that  
18 it was put there while he was alive.

19 This wound is the next big wound. It's  
20 beneath the one I just described. It also had acute  
21 hemorrhage to it.

22 Q When you're saying "acute hemorrhage",  
23 that would be --

24 A Bleeding. So I do know that he was  
25 alive on that one. He also was alive when the wound to  
the left thumb was made. That also bled.

1 He -- the next wound was also a stab  
2 wound, but it's a very small little hole. And that one  
3 went only .3 inches deep, so we're dealing with a very  
4 shallow wound, but then it's placed directly over the  
5 sternum. The sternum is a very sturdy bone. It also  
6 bled. It did show vital reaction. Stab Wound II, I  
7 went back and charted this one, because it was a little  
8 deeper than at first I had noted, but it's still  
9 superficial, and it's between the other two major slice  
10 wounds to the neck.

11 Stab Wound JJ is through skin and  
12 skeletal muscle. That's diagrammed here and it's on  
13 the back side here and it went to a depth of 2.9 inches  
14 through skin, muscle, and in between the vertebral  
15 processes. It's directed from front -- excuse me --  
16 from back to front, slightly from his left to his right  
17 and slightly from top to bottom. So it's approximately  
18 at that angle (indicating). And that one also did  
19 bleed. That was while he was alive.

20 Q Dr. Harlan, while you're down in front  
21 of the jury, I'm going to hand you a series of  
22 photographs and ask you to see if you can look at those  
23 photographs and identify them?

24 A Yes, I can. These are all of Chad  
25 Burnett.



1 Q If you would, take those  
2 photographs--

3 MR. NEWMAN: Your Honor, excuse me.  
4 For purpose of the record, now that Your Honor has had  
5 a chance to see the chart, we renew our objections  
6 concerning the photographs.

7 THE COURT: Okay. The Court will  
8 overrule your objection. Go ahead.

9 Q (By Gen. Blackburn) Dr. Harlan, if you  
10 would, take those photographs and turn around and  
11 explain to the Ladies and Gentlemen of the Jury what  
12 each one represents and what does that tell you about  
13 those injuries.

14 A This is a photograph of Chad's face  
15 (holding up photograph), which shows me several things,  
16 the contact gunshot wound to the eyebrow is here  
17 (indicating). There is bruising beneath it. It did  
18 not take this long to kill him or this would have been  
19 a much bigger bruise. There is some hemorrhage in the  
20 neck involving these, not a marked amount. I might  
21 have expected more bleeding had they been early in his  
22 dying episode rather than late. So I think these are  
23 probably late injuries.

24 Q What about the gunshot wound, can you  
25 tell whether the gunshot wound came before, during or  
after death?

1 A The gunshot wound came before death.

2 Q Okay. And that is by -- what is it  
3 that--

4 A The bruise to the left eyelid here  
5 (indicating on photograph).

6 The next photograph (holding up  
7 photograph) is of Chad's neck and it shows several  
8 things. These are the abrasions which are not very  
9 deep. That's an abrasion and lacerations or slice type  
10 wounds to the neck. And this photograph has been taken  
11 with the head to show the wounds the best. In other  
12 words, instead of the front or side, this has been  
13 taken obliquely from wounds that are directly across  
14 the neck here (indicating on photograph). Also, the  
15 head has been turned to the right to allow me to show  
16 their maximal depth, etc.

17 Q And can you tell from that whether or  
18 not those wounds were before, during or after death?

19 A These are -- these do show some vital  
20 reaction but not a marked amount. There is some  
21 bleeding here, and it did slice blood vessels in the  
22 neck, but not the major bleeding I'd expect if he were  
23 a healthy individual at this point.

24 Q And how many different lacerations or  
25 how many different cuts can you actually see in that

photograph?

1 A I can see a minimum of four, but this  
2 one shows several edges on it. And instead of at --  
3 well, with a knife that's being put into a tissue, you  
4 can put it in and pull it out and have two different  
5 edges on the sharper edge of the knife. In a wound  
6 like this, pulling it across one time does not make two  
7 tails on the wound. Instead, that's -- that's two  
8 separate wounds. These did not line up in the skin  
9 folds as one wound.

10 Q Okay. So that would mean that the knife  
11 is going across the skin how many times?

12 A A minimum of two with this one, a  
13 minimum of two at this one, one with that one, and one  
14 with that one. So there were probably actually six  
15 times across the neck.

16 Q Six times across the neck. And that's  
17 what's demonstrated by this picture?

18 A Yes.

19 Q And this is while he is dying?

20 A This is while he is dying.

21 This photograph is of Chad's left thumb.  
22 (Holding up photograph). And it shows how the injury  
23 was inflicted by the -- by the drawing of the knife  
24 across the finger there.

25 Q Okay. This is a defensive wound --

1 A That's the defensive wound.

2 This injury I did not yet talk about.  
3 (Holding up photograph). This is an injury to the  
4 upper left thigh. And again, this one did not cause  
5 major injury. And I'd call it a superficial  
6 laceration. I did not designate it with AA, BB, etc.  
7 Basically, I was very tired of writing by that time.  
8 And I'd come to the bottom of that page. So I,  
9 instead, designated this as a superficial laceration,  
10 meaning that it did no major damage and charted it as  
11 being 29 and a half inches above the heel. That also  
12 shows vital reaction and is transversely oriented. So  
13 his leg would be like this (indicating), with the  
14 number upside down.

15 Q When you say "vital reaction," meaning  
16 it was --

17 A It was while he was alive. This may or  
18 may not be a defensive wound. If he's trying to get  
19 something in the way of a sharp object, that could have  
20 occurred during the struggle. I don't know.

21 This is the wound to the back. (Holding  
22 up photograph). If you're looking at it from his back,  
23 it would be this way (indicating). And that is a stab  
24 inward type wound to the small of the back. Again, it  
25 shows vital reaction. It does show bleeding, etc.

1 There is a little reddening around the skin, around the  
2 edges.

3 These are the two stab wounds to the  
4 belly button area. (Holding up photograph). If I put  
5 it like this, and you realize that I am taking a  
6 photograph from his right, here is his belly button,  
7 here is the taller or the higher of the stab wounds,  
8 which is BB, here and here is CC, here (indicating on  
9 diagram). We just use this thing here to show us  
10 relative size. This is a centimeter ruler. And these  
11 again are basically directed towards the inside of the  
12 body. And they show the reddening of the edges of the  
13 wounds as well.

14 Q Again, that -- he's alive?

15 A He was alive.

16 This is a photograph (holding up  
17 photograph) of his chest. And I've taken it from the  
18 left side, basically, to show stab wounds just to the  
19 outside of his nipple, but it also shows a little  
20 abrasion here that I did not separately chart as a stab  
21 wound. It's just an abrasion. I don't know how it  
22 occurred, but it's about the same age as all the other  
23 injuries, but it didn't do any major damage. He also  
24 has an abrasion here (indicating on photograph). I  
25 think he had those -- no, he does have punctate  
abrasions here, and I believe that's all.

1                   He does have abrasions here, here, and  
2 here (indicating) on the right shoulder area. I'll  
3 show you those in a minute. This one does show, it's  
4 from the right side, if he's lying down, which is how I  
5 viewed him, it would be like, this is little abrasion  
6 here (indicating). This is the puncture wound, it's a  
7 closer puncture wound shot than the one I'm going to  
8 show you in a minute, show a little tail off it, the  
9 fact that it is a very round little hole rather than  
10 being a slit-like hole here (indicating). This is a  
11 relatively close-up shot of the Gunshot Wound B, but  
12 I've taken it from across the body, it's over here on  
13 the right side of the chest. And it shows a relatively  
14 dense black color around the wound indicating the  
15 deposition of powder because it's a contact nature.

16               Q               All right. So this would show three  
17 different types of weapons.

18               A               Three different types of weapons --

19               Q               And --

20               A               -- in one photograph.

21               Q               -- all of which were the injuries  
22 inflicted prior to death?

23               A               Prior to death.

24               Q               All right. This is the last photograph.  
25 This, again, if you imagine Chad -- it's difficult to

1 do it that way. Let's do it this way. These are some  
2 abrasions, but the important things are the gunshot  
3 wounds to the right chest. That's B.

4 Q The contact wound?

5 A The puncture wound. Yes. That would  
6 be. The puncture wound here (indicating) with a little  
7 tail on it, some scrapes there. And this is the wound  
8 that went through muscle type tissue, in and out. And  
9 here is the stab wound to the right side of the chest  
10 (indicating).

11 Q So, again, that shows three different  
12 types of weapons, the number of weapons, and also  
13 before death?

14 A Before death.

15 Q All before death?

16 A (No response.)

17 Q What, Dr. Harlan, was the cause of death  
18 of Chad Burnett?

19 A Because several of his stab wounds, if  
20 given long enough, could have resulted in his death, I  
21 listed his cause of death as being multiple gunshot  
22 wounds and stab wounds. Several of the stab wounds  
23 were deep enough that if given long enough they could  
24 have led to his death. The gunshot wounds to the right  
25 chest certainly could have caused his death. He was  
probably in a weakened state by the time he received

1 the final gunshot wound, which was the gunshot wound to  
2 the edge of the left eyebrow, which killed him rather  
3 quickly.

4 Q So that he -- all of his injuries  
5 occurred before death?

6 A All of his injuries occurred before  
7 death.

8 Q Can you tell anything about from your  
9 viewing of the body the time of death of Chad  
10 Burnett?

11 A Chad, when initially viewed, by and  
12 others was in rigor mortis, had fixed posterior livor  
13 mortis, and had begun to show drying around the edges  
14 of the wounds, etc. So he had been dead for more than  
15 12 hours. If I tried to go back and -- and categorize  
16 that further on him, I would say that it was probably  
17 right around 12 hours at that time.

18 Q From when he was first viewed or longer?

19 A Uh --

20 Q Would it be consistent --

21 A From when I started the autopsy.

22 Q When the --

23 A No, excuse me, from when first viewed.

24 Q When -- would it be consistent with  
25 being dead around 11:30 on October the 1st?



A Yes, it would.

1 Q So that's his time of death. During the  
2 course of your autopsy, do you also look at the stomach  
3 contents?

4 A Yes, I do.

5 Q And what were you able to determine  
6 about the stomach contents of Chad Burnett?

7 A We actually weigh and measure our  
8 stomach contents. And what we found was that he had in  
9 his stomach 180 cc.'s dark green-black mush which you  
10 couldn't see through. And it contained bits of onion,  
11 cheese, green pepper, black olives, mushrooms and  
12 pepperoni.

13 Q Would that be some of the ingredients of  
14 a pizza?

15 A That sounds like a pizza supreme.

16 Q And based on what you could see, can you  
17 tell anything about the time of death with regard to  
18 looking at the stomach contents?

19 A I can tell that Chad ate within one hour  
20 of the time that he died.

21 Q I think that's all I had with regard to  
22 Chad.

23 GEN. BLACKBURN: Your Honor, at this  
24 point I'm going to request that the photographs be made  
25 an exhibit to our hearing and that the two charts be a

1 collective exhibit as to Chad Burnett.

2 THE COURT: Okay. The pictures will be  
3 one collective exhibit and the diagrams will be another  
4 collective exhibit as the next number as to Chad  
5 Burnett.

6  
7 (State's Exhibit No. 33,  
8 photographs, marked and  
9 filed.)

10  
11 (State's Exhibit No. 34, two  
12 (2) charts, marked and filed.)

13  
14 Q (By Gen. Blackburn) Dr. Harlan, after  
15 you did the autopsy with Chad Burnett, did you then do  
16 an autopsy of Judith Smith?

17 A Yes, I did.

18 Q And what, if you would, in doing this,  
19 do you recognize these two charts?

20 A Yes, I do.

21 Q And are these the charts that you made  
22 with regard to the autopsy of Judith Lynn Smith?

23 A They are enlargements of those charts.

24 Q Would you just, either using the charts,  
25 or explain your view of the body of Judith Smith.

1                   A                   Okay. Let me make one note here. All  
2 of the information, I believe, is on that one. There  
3 is one -- a Special Chart 11 here. And the edges of  
4 the abrasion here got cut off by our xerox machine's  
5 copy.

6                   All right. The wounds on Judith were a  
7 gunshot wound, which was not contact, which did not  
8 show near stippling, but instead showed that the muzzle  
9 had to have been more than two feet from the left arm,  
10 which entered the back side of the left arm and came  
11 out the front side of the left arm. Those are  
12 designated as Gunshot Wound B and Exit Wound C. This  
13 did show vital reaction. She was alive when this  
14 occurred. It did not lead to her death.

15                  Q                  Let me stop you at this point. When  
16 you're saying the back side of the arm, it would have  
17 to be facing the --

18                  A                  Anatomic -- anatomic position would  
19 place that at the back side of the arm. That doesn't  
20 mean that she was shot from the back. She could have  
21 easily have been shot through the back side of the arm,  
22 with her arms back side toward the gun, facing the gun.

23                  Q                  Okay. So she could have had her -- like  
24 her arm between the gun and the other parts of her  
25 body?

                  A                  That's correct.

1 Q Okay. Gunshot Wound A.

2 A Gunshot Wound A is at the top of the  
3 neck. It does not show well on any of these diagrams  
4 because this is a front and back shot. And this is a  
5 side area, but it's approximately here (indicating on  
6 self).

7 Gunshot Wound A, when -- especially when  
8 compared to Gunshot Wound which is .24 by .24 inches is  
9 somewhat bigger and shows a large amount of black color  
10 around it, which is the powder burn. This is a gunshot  
11 wound which would be described as being a near gunshot  
12 wound, but I can qualify that a little bit further by  
13 telling you that anything within two feet is considered  
14 a near gunshot wound, because it will leave a spray of  
15 black powder. This is considerably closer than that.  
16 And while not immediately adjacent to the skin, has to  
17 be very close to it, because this did not have the  
18 stipple pattern around it that a further back gunshot  
19 wound would show.

20 Q So on Chad we had contact wounds, we've  
21 got the near gunshot wound and then the other --

22 A What we would classify as a distant  
23 gunshot wound being more than two feet from the skin to  
24 the muzzle.

25 Q This one was within two feet or closer?

A                   Definitely.

1                   All right. Those were the gunshot  
2 wounds. She also had a slice wound to the neck. Hers  
3 is a bit different because instead of being over here  
4 with the gunshot wound it's more on the right side of  
5 the neck coming around to the midline. And this one on  
6 her does not show even a degree of bleeding that those  
7 on Chad showed. Now, I qualify that by saying "mild  
8 hemorrhage." The amount of bleeding that was present  
9 from this slice was about that that would be drained if  
10 you slice something that's already dead or dying. So  
11 circulation to the neck was not good at this point.  
12 Her heart may have actually already stopped.

13 Q               So these lacerations to her neck could  
14 have been after death?

15 A               At or after death.

16               The Stab Wound BB, again, is superficial  
17 and it's here (indicating on diagram), and it's a  
18 small, narrow wound, very similar to Chad's wound that  
19 was here (indicating on diagram), but it was a little  
20 further down and right here (indicating on diagram).

21               Stab Wound CC is, again, small and  
22 round, superficial, and right there (indicating on  
23 diagram). Stab Wounds DD and EE are, again, round.  
24 This one (indicating on diagram) is only .08 inches  
25 by .015 inches, but it is at a little bit of an

1 oblique angle causing that kind of ovoid or a  
2 tadpole-type shaped wound there.

3 This one, again, is a puncture type  
4 wound. The injuries that these cause internally were a  
5 little interesting, too. The near gunshot wound to the  
6 neck went through the skin, through the soft tissues in  
7 the neck, through the C-3 vertebral discs, through the  
8 cerebral -- through the cervical spinal cord, slicing  
9 it into. And the bullet was recovered in the cervical  
10 spinal canal. The bullet was at 59 inches above the  
11 heel. The entry wound is at 60 inches above the hell.  
12 The direction of the bullet went was from left to right  
13 and from anterior to posterior. So we're talking at an  
14 angle left to right and anterior to posterior, but not  
15 downward or upward.

16 Q What would be the effect of this gunshot  
17 wound?

18 A This gunshot wound, because of the  
19 injury, which is a transection, a total separation of  
20 the cervical spinal cord would have rendered her  
21 incapable of moving her arms or legs at that point.

22 Q In other words, she would have been  
23 paralyzed from the neck down?

24 A That would have been instant paralysis.  
25 She also had subdural hemorrhage in the area and

1 bleeding. She also had subarachnoid hemorrhage from it.  
2 I doubt seriously if she would have been capable of  
3 breathing at this point. If she did, it was not for  
4 very long. There was some bleeding into the upper  
5 airway, and it did not really get down far into the  
6 lungs. So I think she may have had a few deep breaths,  
7 and that's about it.

8 In -- in going through the neck and  
9 being lodged in the canal, it went through the basilar  
10 artery and left vertebral artery or actually lacerated  
11 those arteries from the motion as it went past. That  
12 caused bleeding inside the brain itself, caused a  
13 hematoma of the left internal jugular vein in the neck.  
14 That quickly ended her life.

15 Q What -- the -- how many different types  
16 of weapons were used on Judith Smith?

17 A I doubt seriously if the puncture wounds  
18 that were superficial here (indicating on diagram) were  
19 made by a really, really sharp instrument capable of  
20 giving the slice that we have here (indicating on  
21 diagram). So I really believe that there are a gun and  
22 two different types of instruments to make the stab and  
23 slice shapes.

24 Q So, again, three different types of  
25 weapons?

A Correct.

1 Q Can you state anything at all about the  
2 -- the instrument that was capable of doing that  
3 slicing -- slicing motion?

4 A Not very much. Again, I did not see  
5 evidence for serration. And its depth of the slice  
6 was .8 of an inch.

7 Q So no serration and -- but with regard  
8 to the depth, it did not go very deep.

9 A It did not go very deep, but it should  
10 have made more bleeding than it did, because .8 of an  
11 inch is approximately that far (indicating with hands)  
12 beneath the skin. And in the area that it went in,  
13 there are plenty of smaller blood vessels that should  
14 have been redder had the heart still been functioning.

15 Q And the puncture wounds were caused by  
16 what kind of an instrument?

17 A Again, it's something with a sharp  
18 point, like an ice pick, something similar to that.

19 Q Similar to ones that you observed on  
20 Chad's body?

21 A Yes.

22 Q Was there any way to tell from your  
23 observations whether or not the same instrument was  
24 used on both Chad and Judith?

25



1                   A                   Not precisely, but it appears likely. I  
2                   can find no dissimilarities.

3                   Q                   The puncture wounds, were they made  
4                   before or after the death of Judith Smith?

5                   A                   The puncture wounds charted here  
6                   (indicating on diagram), there was very, very little  
7                   bleeding. And particularly, on the one here, which I  
8                   diagrammed here (indicating on diagram). Stab Wound --  
9                   let's see, it's not BB. It's EE, here (indicating on  
10                  diagram). That wound went in a maximal depth of 2.20  
11                  inches. And it was going from front to back and a  
12                  little bit from bottom to top. And it went into the  
13                  right lobe of the liver, and yet, it caused no major  
14                  bleeding. A liver, when stuck, bleeds, remarkably.  
15                  This was capable of producing with these sized holes,  
16                  but at the same time it didn't bleed, so I believe that  
17                  Judith's heart had already stopped by the time that  
18                  this wound was administered.

19                  Q                   Okay. So the puncture wounds are after  
20                  death?

21                  A                   I do believe they are.

22                  Q                   Dr. Harlan, let me hand you a series of  
23                  five photographs and ask you if you'd look at those and  
24                  see if you can recognize those.

25                  A                   Yes, I do. I took these, and they are  
all of Judith Smith. The first one is a photograph

1 showing the Gunshot Wound A, which is back here, in the  
2 side of the neck just past the angle of the mandible.  
3 And you can see the black coloration around it. You  
4 can also see some red around it. That is vital  
5 reaction.

6 Q Okay. Vital reaction, meaning she was  
7 alive when this -- the gunshot wound --

8 A Yes.

9 The second photograph is of the right  
10 side of her neck, taken from the right. (Holding up  
11 photograph). This is her chin (indicating on  
12 photograph). That's her left shoulder. She's in that  
13 position, and it's obliquely orientated, and it is a  
14 slice type wound. And there's very little bleeding.

15 Q Which would lead you to believe this is  
16 after death?

17 A Yes.

18 Q And --

19 A At or after.

20 Q At or after death. Can you tell whether  
21 or not there's one or two?

22 A On that particular one, I could not see  
23 a good tail type edge at either end. That may have  
24 been one. If it was not one, then the deeper cut had  
25 to have been centrally placed and not involving the

skin.

1 Q So one, maybe more?

2 A One, maybe more.

3 This photograph is of Judith's left  
4 elbow. (Holding up photograph). This shows the  
5 distant of entry gunshot wound to the back side of her  
6 arm and a little bruise above it.

7 This photograph I made before I took her  
8 shirt off. This is her left arm coming down this way  
9 (indicating on photograph), almost off the photograph.  
10 This is Stab Wound BB. And you can see a very small  
11 hole in the shirt. It shows that the shirt was also  
12 penetrated by whatever caused the puncture wounds. And  
13 that's all the bleeding that there was at a time  
14 between injury and when she was finally brought in to  
15 us.

16 Q Which would indicate, again, that it  
17 was--

18 A There is no indication there that her  
19 heart was beating.

20 Q So that --

21 A So that's about what would be soaked out  
22 by a blotter-type effect from the shirt from a puncture  
23 on someone that's dead.

24 This (holding up photograph) is the same  
25 wound as it looked after we took the shirt off. And

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1 there's -- I mean it's very easy to overlook it. It's  
2 a small, little hole there and no reddening around the  
3 edge.

4 Q And what was the cause of death of  
5 Judith Smith?

6 A I listed Judith's cause of death as  
7 multiple gunshot wounds and stab wounds. Basically,  
8 the gunshot wound that -- that ended her life was the  
9 one to the angle of the jaw, upper neck here  
10 (indicating on diagram).

11 Q So the main cause of death would be this  
12 gunshot wound (indicating on diagram).

13 A - That's correct.

14 Q Which caused the paralysis. And would  
15 the time of her death be consistent with 11:20 or  
16 before on October the 1st of 1989?

17 A Yes, it would.

18 Q And again, did you look at the contents  
19 of -- of her stomach?

20 A Yes, I did. Hers was somewhat different  
21 from that of Chad. Her stomach contained 570 cc.'s or  
22 grams of orange-tan mush with green leafy vegetables,  
23 sliced peaches, noodles, yellow cheese, orange grease,  
24 bread, brown -- brown meat that was ground up, onion,  
25 and tomato.

1 Q And what would that tell you about the  
2 time of death with regard to when she had eaten?

3 A She had definitely eaten within the hour \*  
4 of her death.

5 GEN. BLACKBURN: Your Honor, at this  
6 point, I'd request that these photographs be made the  
7 next exhibit and the two charts, be a collective  
8 exhibit.

9 THE COURT: Again, the same way, be  
10 collective, the pictures, and then the charts another  
11 exhibit.

12 (State's Exhibit No. 35, five  
13 (5) photographs, marked and  
14 filed.)

15  
16 (State's Exhibit No. 36, two  
17 (2) charts, marked and filed.)  
18

19 Q (By Gen. Blackburn) Dr. Harlan, after  
20 you performed the autopsy on Chad and Judith Smith,  
21 Chad Burnett, did you then perform an autopsy on  
22 Jason Burnett?

23 A Yes, I did.

24 Q Okay. If you would, just describe his  
25 injuries.

1           A                   If you'll look, we do have a chart  
2           that's different from the other two. Basically, these  
3           are the same two types of charts for him. Jason had no  
4           gunshot wounds. Instead, he has all stab type wounds  
5           and lacerating type stab wounds.

6                           He had a few abrasions on the back of  
7           the neck, some scars and other things, a yellow and  
8           purple contusion of the left eye, which is something  
9           that occurred prior to the episode leading to his  
10          death. This would have required a day or more to have  
11          shown that yellow-purple change. The contusion here  
12          with the central abrasion, however, was -- the other  
13          abrasion that's listed on here are also fresh.

14                          What he had was a series of stab wounds.  
15          Let me begin with A, which is the one to the left side  
16          of his neck. And again, this stab wound is looked at  
17          uneven and shows some change around it that just  
18          suggests more than one motion back and forth. This one  
19          is from the left, clear across the midline slightly on  
20          the right, but more on the left than the right.

21                          That one was directed inwards. It had a  
22          maximal depth of half an inch and showed dimension of  
23          6.2 inches by .65 inches. So it's over 6 inches long.  
24          This one did bleed. He was still alive and still --  
25          heart activity was going on when this occurred.

Stab Wound B is to the upper abdomen.

1 This is its shape, .8 by .4 inches, and places it in  
2 the same range as the stab wounds that we've described  
3 on his brother. Stab Wound B is here (indicating on  
4 diagram). This stab wound went through the abdomen,  
5 went through the entire anterior abdominal wall, went  
6 through the entire thickness of the left lobe of the  
7 liver, went through the inferior vena cava, which is  
8 the big vein that takes blood all the way from the --  
9 everything below the diaphragm back into the heart and  
10 also got the right edge of the first lumbar vertebrae  
11 disc. We're talking backbone disc, and then ended in  
12 the right perispinous muscles and deep fat beneath the  
13 skin in the back. Its minimal depth is 5.1 inches.

14 Q So what does that tell you about the  
15 injuries that cause that?

16 A The blade almost had to have exceeded  
17 more than about 4.8 inches in order to have indented  
18 the skin that far and would depend somewhat on how much  
19 he was able to give, how much force was used and how  
20 sharp the instrument was as to what its actual length  
21 would have been.

22 Q And it has to be at least 4.8 inches  
23 long?

24 A Correct. This was directed from the  
25 front to the back but from the inferior to superior,

1 meaning it was angled upwards. And it was angled from  
2 left to right. And it actually went across the midline  
3 and into the back there (indicating on diagram). And  
4 there was quite a bit of bleeding from it. He had two  
5 shared wounds that could have caused all of the  
6 bleeding that we saw.

7 And the next one is the one that could  
8 also have been a fatal wound. That would could have  
9 been fatal, and it would have taken him a matter of  
10 minutes to die. The other wound, also, could have been  
11 fatal and, again, would have taken a matter of minutes,  
12 possibly half an hour to die.

13 Stab Wound C is a very long stab wound,  
14 but even though it looks like a slice-type wound, it  
15 has to have been done with major amount of depth to it.  
16 So I believe it was from a raking motion, not of a  
17 slice but instead of a knife put in and pulled.

18 Q And why is it that you think that?

19 A I think this because of its depth.

20 Q And what's that?

21 A Its minimal depth is 3.8 inches.

22 Q Minimal depth?

23 A Minimal depth.

24 Q And maximum depth?

25 A About that.



1 Q What was actually --

2 A You can actually trace it that far.

3 Q What was the result of that particular  
4 raking motion?

5 A The result there is that it went into  
6 the abdomen, raked across and lacerated the left  
7 common iliac vein, which is the big vein coming up from  
8 the leg. It carries everything from the leg and part  
9 of the pelvis up into the inferior vena cava and also  
10 got the muscle that's attached to the backbone and had  
11 quite a bit of depth within that muscle. And the  
12 result of it not only was the bleeding that occurred,  
13 but the majority of the small bowel was exposed to that  
14 wound and made its way out of that wound.

15 Q That was as a result of the raking  
16 motion?

17 A No, it's a result of the big wound.

18 Q So it cut the muscle to the extent that  
19 the lower bowel came out?

20 A The upper bowel.

21 Q The upper bowel.

22 A The small bowel came out, yes.

23 The other wounds that he had were to the  
24 trunk. They're not as impressive. He had a Stab Wound  
25 D, here, (indicating on diagram), to the lower abdomen.  
And its minimal depth because it was between loops of

1       bowel, and we couldn't trace exactly how deep it went,  
2       but was 1.2 inches. It did go into the peritoneum  
3       cavity and did bleed in the issue around it.

4               Stab Wound E was to the right anterior  
5       chest, here, (indicating on diagram), and its maximal  
6       depth was 1.2 inches. Stab Wound E, again, is .44  
7       by .25 inches. This is not a puncture. This on him  
8       was some drying of the wounds prior to the fact of me  
9       charting it, giving it a more ovoid appearance.

10       Q               When you say "not a puncture", how many  
11       types of instruments were used on Jason Burnett?

12       A               Jason may have had all of his injuries  
13       from one instrument. They were certainly all in the  
14       classification that we would consider that of a knife.

15       Q               Can you tell us anything about the  
16       knife?

17       A               It would had to have been fairly sharp.  
18       It would had to have been fairly long. It could have  
19       been something such as a barber's type razor. It could  
20       have also been a sharpened cutting knife or a kitchen  
21       knife that was very sharp.

22       Q               A cutlery type knife?

23       A               If it were sufficiently sharp.

24       Q               Was there any evidence from your  
25       observations of the wounds a serrated blade?

1                   A                   No, there was no observations to  
2 suggest serration. There is an unusual pattern to Stab  
3 Wound D. And there is a little bit of a V-shape to it.  
4 And I don't know whether this represents a second small  
5 slice here and a bigger slice here and an instrument  
6 that may have had a single edge for most of its blade  
7 or not. But that does suggest that. And there was  
8 some suggestion of that sort of thing with his  
9 brother's wounds as well.

10                   Q                   So from the suggestion of this wound and  
11 some on Chad, you're saying that the same knife was  
12 used?

13                   A                   May well have been. And I really can't  
14 tell whether it was a double-edged knife, a single-  
15 edged knife with a partial double edge or just an awful  
16 lot of activity with a single-edge knife.

17                   Q                   When you say "a lot of activity," that  
18 is movement?

19                   A                   Yeah.

20                   Q                   Either --

21                   A                   Twisting.

22                   Q                   That would be caused by either the  
23 movement of the knife or the body on the knife?

24                   A                   The movement of the boy or the movement  
25 of the knife in relation to the movement.

1 In addition to those, we have another  
2 chart here to show the injuries to Jason's hands. He  
3 has on the back of his right hand a little laceration  
4 here, but he also has a big laceration to the angle of  
5 the thumb that shows it slightly here (indicating on  
6 diagram). This is the right thumb on these two. This  
7 is the left hand (indicating on diagram). And there is  
8 a slice here that extends around onto the back side of  
9 the hand slightly, and a slice here (indicating on  
10 diagram). But the majority of the injuries are where  
11 he can have gotten them by grabbing at the knife, at  
12 the blade. And these three could have conceivably been  
13 made by one stroke, if he had hold of it with his right  
14 hand, left hand, excuse me, if he had hold of it  
15 pulling, and there was force against those fingertips.

16 This represents the second one and this  
17 a third one (indicating on diagram), or possibly more  
18 than one. This could have been multiple times through  
19 the thumb area there. I can't really tell.

20 The right hand -- I'm sorry, I don't  
21 know whether he was right or lefthanded, but the right  
22 hand sustained more injuries to the palm side. And  
23 again, these were slices across the palm to the thumb,  
24 little scrapes on the fingers, and bigger scrapes, and  
25 a large scrape across the base of the knuckles. This

1 one -- these two did line up. This one didn't line up  
2 quite as well, but could conceivably have been from  
3 that. I tried to calculate how many times he would  
4 have had to have grabbed the knife and had it removed  
5 from his hand and grabbed the knife as it was coming  
6 toward him in order to do those injuries. And you  
7 really can't get a -- a really good number on it.  
8 There -- it could range from about 10 to certainly more  
9 than 13.

10 Q So 10 to 13 times that the knife would  
11 have had to have enter the hand --

12 A Yes. If there is -- the reason my  
13 estimate is a little lower than I think, because there  
14 may have been a double-edged blade. And some of these  
15 injuries may have occurred because the skin's being  
16 folded up around something with two blades, edges.

17 Q What -- how do you classify these type  
18 of wounds on Jason's hands?

19 A These injuries on Jason are quite  
20 characteristic of what we see with defensive type  
21 wounds. I'm assuming that he did not deliberately try  
22 to grab something that sharp unless he needed to. So I  
23 do think that these are -- are defensive type wounds.  
24 They're not the sort of thing that one does to one's  
25 self unless one's trying to protect one's self from a  
sharp instrument.

1 Q The injuries to Jason in all of these,  
2 were they before or after death?

3 A They are all before death.

4 Q And the hands and all. What was the  
5 cause of his death?

6 A I classified his death as being due to  
7 multiple stab wounds. To be a little more exact, he  
8 died from quite a bit of bleeding. Two wounds, in  
9 particular, could have led to his death much more  
10 quickly. And those were the two that I showed you,  
11 here and Stab Wound B (indicating on diagram),  
12 because those did get major blood vessels. They did  
13 get veins rather than arteries. And it takes a while  
14 longer because they are not under pressure that an  
15 artery is, in order to die.

16 Q All right. I'd hand you a series of six  
17 photographs, and ask you to look at those and see if  
18 you can identify them.

19 A Yes, I can.

20 Q If you would, please explain what each  
21 one of them represents to the jury.

22 A Yes. This is (holding up photograph)  
23 Jason's neck injury. This is the extent of the left  
24 side of the neck. There's also -- you can see the  
25 bruising of the eye that's beginning to fade. The

1 other important thing in this photograph is this purple  
2 color. And the purple color here (indicating on  
3 photograph) is not bruising, this big one. The purple  
4 color here is because he was lying on his left side for  
5 more than 12 hours before he was removed from his left  
6 side.

7 Q So if he were found on that left side--

8 A Yes.

9 Q -- or first observed by someone, he  
10 would have had to have been on that left side --

11 A For more than 12 hours prior to being  
12 moved. The reason for that is that livor mortis, which  
13 is what this represents is pooling of the blood by  
14 gravity. As it pools, it can be, if you roll the  
15 person, then it will start pooling in the other  
16 direction. It only begins to fix in the tissues at  
17 approximately 12 hours. His, I think, had been more  
18 than 12 hours because it did not move during the entire  
19 time of the autopsy. Some of these photographs were  
20 made more than a day later. He had been lying on his  
21 back in our facility during that time and still has  
22 this anterior left side pooling of the blood.

23 Q So that would tell you or would it tell  
24 you that he had been laying on that left side prior to  
25 being found at least -- or prior to being moved at  
least if not more than 12 hours?

1 A Correct.

2 The second photograph shows that same  
3 finding, but it also shows the extent of the wounds,  
4 which comes from behind the left ear, clear across the  
5 right midline. It also shows his shirt that he had on  
6 with quite a bit of blood soaked into the shirt.

7 Q And what does that -- what does that  
8 wound show you about whether or not that was before  
9 death and can you tell --

10 A That -- that shows me that there is an  
11 accentuation of the blood up here around the neck.  
12 There is some pooling back here on the back of that.  
13 And this shows me that he was alive and did bleed after  
14 the injury to his neck.

15 Q And can you tell how many strokes that  
16 that laceration made?

17 A That laceration has got some unusual  
18 directional changes to it. And the right side of it,  
19 in particular, has two little tails over there. So it  
20 suggests at least three changes of direction across.

21 Q Would that be three different slices  
22 that--

23 A It could be three different slices or it  
24 may be going across it while moving.

25



1 Q It could be moving across it three times  
2 without removing the blade?

3 A Yeah. Either three slices, probably in  
4 this direction (indicating) or three times like that  
5 (indicating).

6 Q But three separate movements?

7 A Correct.

8 Q On his neck.

9 A Correct.

10 The other photographs that I have are of  
11 his hands to show what the diagram also attempts to  
12 show, and that is, the injuries mostly to the palm side  
13 of his hands. This is the back of his right hand. You  
14 can see the injury to his right thumb and the small  
15 injury to the back of the right thumb (holding up  
16 photograph).

17 This one is of the palm side of the left  
18 hand. The thumb is over here off the photograph  
19 (holding up photograph). But it shows the slice marks  
20 to the fingertips.

21 The next one (holding up photograph) is  
22 the palm side of the right hand and shows the numerous  
23 different slice marks across, basically, the right  
24 hand. There's a little variation in angle. Some of  
25 these are a little deeper. And some of them may have  
been like this (indicating), others trying to grab

1 something aimed at or being pulled away from him.

2 Q Is this the hand that has a minimum of  
3 ten to thirteen different --

4 A Right. And as I said, there could be  
5 more than thirteen. I really can't tell, for instance,  
6 how many times it may have gone through that same  
7 slice.

8 The back of the left hand is shown in  
9 that photograph (holding up photograph). To show that  
10 two-tailed laceration there and the ones here  
11 (indicating).

12 Q And what does the two-tailed  
13 lacerations tell you?

14 A That tells me two different changes in  
15 direction, being pulled through them twice, two  
16 strokes.

17 GEN. BLACKBURN: Your Honor, again, I  
18 would request that those pictures be made a collective  
19 exhibit and the charts be a collective exhibit.

20 THE COURT: Okay.

21  
22 (State's Collective Exhibit  
23 No. 37, six (6) photographs,  
24 marked and filed.)  
25

(State's Collective Exhibit  
No. 38, three (3) charts,  
marked and filed.)

Q (By Gen. Blackburn) Take your seat,  
Doctor.

A All right.

(WHEREUPON, the witness returns  
to the witness stand.)

Q (By Gen. Blackburn) Dr. Harlan, can you  
tell how long it had been since Jason Burnett had eaten  
at the time of his death?

A Yes, I can, within limits. Within his  
stomach, he, as his brother, had a -- a fairly full  
stomach. He had 430 cc.'s of tan, thick mush with  
yellow grease, sliced black olives, onions, mushrooms,  
a small piece of paper that I'm still wondering about,  
flat noodles, tomato and green pepper.

Q Would that also be ingredients of a  
pizza?

A Part of them could well be the  
ingredients of a pizza. I really don't know where he  
got the flat noodles and I don't know if he just was  
very hungry or how he got the piece of paper.

1 GEN. BLACKBURN: If I can have just a  
2 minute.

3  
4 (Pause in the proceedings while  
5 Gen. Blackburn confers with  
6 Gen. Thurman.)

7  
8 Q (By Gen. Blackburn) Dr. Harlan, did you  
9 have an occasion to, one, go to the -- 324 Lutie  
10 Street?

11 A Yes, I did.

12 Q And in addition to that, did you also  
13 look at some knives that were collected from 324 Lutie  
14 Street?

15 A Yes, I did.

16 Q And when you looked at those knives,  
17 were there any of those that could have been used to  
18 cause any of the injuries that you saw?

19 A The knives themselves did not appear to  
20 be very sharp. Several of them didn't have handles.  
21 And it would have taken quite a bit of force to inflict  
22 the majority of the injuries that I saw here. The one  
23 thing that I have not seen is the implement that --  
24 well, I haven't seen the implement that produced the  
25 puncture injuries either, if one was collected.

Q Okay. Well, Dr. Harlan, I'll hand you  
1 Exhibit No. -- have the court officer hand you

2 Exhibit No. 8, and ask you if you can look at that.

3 A All right. This could easily be the  
4 instrument. It would certainly take something about  
5 the size and sharpness of this. And that could be the  
6 ones that produced the puncture wounds, particularly  
7 the ones to the chest there.

8 Q So that awl that's been previously  
9 identified could, in fact, have produced the  
10 puncture wounds that you observed on both Judith Smith  
11 and --

12 A Chad.

13 Q -- Chad?

14 A Yes.

15 Q Dr. Harlan, I'll have -- I'll hand you  
16 what's previously been identified as Exhibit 30 for  
17 identification only, and ask you if you would look at  
18 that and see if you can identify that?

19 A Yes, I can.

20 Q And what is that?

21 A These are three bullet pouches that I  
22 prepared of the three bullets that I removed from the  
23 victims.

24 Q And they were removed from which  
25 victims?

1 A From Judith and from Chad, two from  
2 Chad.

3 GEN. BLACKBURN: Your Honor, I'd just  
4 request that the Exhibit No. 30 be made an exhibit to  
5 her testimony.

6 THE COURT: Let it be done. Hand those  
7 over.

8 THE WITNESS: All right.

9 THE COURT: And those will be Exhibit  
10 No. 30.

11  
12 (State's Exhibit No. 30,  
13 bullets, marked and filed.)

14  
15 Q (By Gen. Blackburn) And Dr. Harlan, I'd  
16 hand you Exhibit -- actually, it's a picture from  
17 Exhibit 6, and ask you if you would look at that knife  
18 and see if that's the type of instrument that could  
19 have done the injuries that were to both the -- all the  
20 victims?

21 A It does not appear to have been.

22 Q Okay.

23 A No.

24 Q That's more like a kitchen type knife?

25

1                   A                   I would -- I would have to take that  
2 home and sharpen it first.

3                   GEN. BLACKBURN: If I can have just a  
4 moment, Your Honor.

5                   (Pause in the proceedings while  
6 Gen. Blackburn confers with  
7 Gen. Thurman.)

8  
9                   GEN. BLACKBURN: Your Honor, I don't  
10 have any further questions of Dr. Harlan.

11                  THE COURT: Mr. Newman.

12                  MR. NEWMAN: Your Honor, if I could have  
13 just a second, please.

14  
15                  (Pause in the proceedings while  
16 Mr. Newman confers with Mr. Dean.)

1 MR. DEAN: That's all.

2 THE COURT: Mr. Thurman.

3  
4 CROSS-EXAMINATION

5 BY GEN. THURMAN:

6 Q Detective Smith, you and Detective  
7 Bernard travelled to Springfield together, did you not?

8 A That's correct.

9 Q And you both participated in the  
10 questioning?

11 A Correct.

12 Q But from time to time you would leave  
13 the room; is that correct?

14 A Yes, I did.

15 Q To do certain things. So you weren't  
16 present the entire time?

17 A No.

18 Q He was questioned. Okay. During the  
19 time you were there, when Mr. Smith would discuss his  
20 wife, what tense would he use?

21 A He was using her name "Judy" in past  
22 tense. Everything he said about her was in past tense.

23 Q When you started questioning him about  
24 where he was and what he was doing, did he ask you why?

25 A No, he didn't.



1 Q Even after he was informed -- well,  
2 let's talk about this emotion. You say there was  
3 watering in his eyes?  
4 A Yes, it was.  
5 Q How long did that emotion last?  
6 A Not very long.  
7 Q Okay. And after that, did he ever ask  
8 you how they were killed?  
9 A Not that I recall, no.  
10 Q Did he ever ask you if you'd caught  
11 anybody that had killed them?  
12 A No, he didn't.  
13 Q Did he ask you when they were killed?  
14 A No.  
15 Q And what time did he tell you he  
16 arrived in Springfield at his residence with the twins  
17 on October the 1st, 1989?  
18 A He said he got back at his home at 10  
19 o'clock p.m.  
20 Q Okay. What did he tell you he did once  
21 he got back?  
22 A He said he took his twin boys to his  
23 mother's trailer or house and packed some clothes, got  
24 a drink of water and then left to go to Kentucky at  
25 10:30, around 10:30.

1 of work on that Monday.

2 Q And did he say why he told her that when  
3 he had to go to Kentucky?

4 A He said he -- he -- he forgot that he  
5 was having to go to Kentucky.

6 Q So he forgot --

7 A But he had --

8 Q -- he had to drive to Morehead --

9 A -- prearranged it --

10 Q Excuse me. I didn't mean to interrupt  
11 you.

12 A He said he prearranged with Judy to have  
13 them on Monday. Normally -- than the week -- longer  
14 than the weekend, he has them on the weekend, and he  
15 made arrangements to have them on Monday because he was  
16 going to be off work, that he forgot that he had to go  
17 to Morehead, Kentucky, for that job.

18 Q And did you see his car that night?

19 A Yes, I did.

20 Q What kind of a car was he driving?

21 A It's a four door white Ford, Crown  
22 Victoria. It's an old police car.

23 Q Okay. Did you have any discussions  
24 about that car with him?

25 A Yes, I did.

CROSS-EXAMINATION

BY GEN. THURMAN:

1  
2  
3 Q Mr. Smith, I think you go by the name of  
4 Frank, is that right?

5 A Yes, sir. In Ohio, that was my  
6 nickname.

7 Q And people you work with basically know  
8 you as Oscar, but the family calls you Frank; is that  
9 right?

10 A No. When I started working for what is  
11 now MSC, originally, my uniform said Frank on them.

12 Q But you switched it to Oscar?

13 A The company switched it.

14 Q But you go by the name of Frank; is  
15 that--

16 A I go by Frank or Oscar.

17 Q And let's see, your first marriage --  
18 the wife you talked about, Wanda O'Shea; is that right?

19 A That is her present name, yes.

20 Q In what year did you marry her?

21 A 1971.

22 Q I believe she was 13, is that correct?

23 A Possibly.

24 Q Possible?

25 A (No response.)

Q Well, how do you get that, if you're the  
1 beneficiary --

2 A Because --

3 Q -- and you've already filed claims for  
4 \$88,000? How do you not benefit?

5 A Because every penny of that money goes  
6 to the children.

7 Q That's not by law, that's --

8 A That was mutual agreement between Judy  
9 and I, the same as the way her funeral was supposed to  
10 be arranged, and she knew how I was to be put away if  
11 that was me.

12 Q But Judy's not around to enforce that  
13 mutual agreement, is it? So it will be your decision  
14 about what to do with the \$88,000, if, in fact, you get  
15 it; isn't that correct?

16 A It's not a decision, really, to be made.

17 Q I understand that. Right now it's not.  
18 The car that you were driving, the one that was  
19 identified here in the photograph, that was the car you  
20 were driving, is that right?

21 A I drove it that day, yes.

22 Q Describe that car?

23 A It's a '87 Ford LTD. It's an ex-police  
24 patrol car, has a trailer hitch, a piece of molding off  
25 the back left corner of it, dome light out of it, holes

1 in each of the door panels where -- where a shield had  
2 been up in there, to divide the front from the back,  
3 and no door hinges on the back.

4 Q Would it go 140 miles an hour?

5 A It may.

6 Q Do you remember talking to the police  
7 and telling them it would go 140 miles an hour and the  
8 only speed you knew was faster and faster and faster?

9 A I don't remember that exact  
10 conversation.

11 Q What was the conversation about your  
12 driving?

13 A He asked me -- the conversation came up  
14 about the car. He asked me if it was a patrol car. I  
15 told him, yes, it was a Murfreesboro police car, and it  
16 140 on the speedometer.

17 Q Did you comment about your driving or  
18 your speeding?

19 A I told him that I had tried it one time.

20 Q So you'd driven that car 140 miles an  
21 hour?

22 A Not at 140, no.

23 Q How fast would it go?

24 A Probably 115, 120.  
25